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ABSTRACT

This document provides a complete record of testimony presented at a series of hearings before the U.S. Congress on the electronic collection and dissemination of information by federal agencies. In looking at the effect of new computer and communications technology on government information activities and practices, the hearings considered such issues as the capabilities and expense of modern computerized information systems, and the consequent reevaluation of the role of government agencies in the dissemination of public information. The first day of hearings concentrated on the EDGAR (Electronic Data Gathering, Analysis, and Retrieval) system developed at the Securities and Exchange Commission. Testimony on the second day considered the proposal of the Federal Maritime Commission (FMC) to establish an automated tariff filing and information system. To explore potential conflict between the FMC and the private sector, some of the companies offering tariff automation services offered testimony. Other witnesses at the hearing represented three agencies that have developed electronic dissemination systems for press releases and other agency data--the Census Bureau, Food and Drug Administration, and Department of Agriculture. The final day of hearings focused on the National Library of Medicine's Medlars system and on the trademark automation activities of the Patent and Trademark Office. The hearings were held to review those decisions and to compare and contrast alternative approaches. (THC)

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ELECTRONIC COLLECTION AND DISSEMINATION OF INFORMATION BY FEDERAL AGENCIES

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON

GOVERNMENT OPERATIONS

HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

APRIL 29, JUNE 26, AND OCTOBER 18, 1985

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[2] Resigned from committee Oct. 10, 1985.
[3] Appointed to committee Oct. 10, 1985.
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ELECTRONIC COLLECTION AND DISSEMINATION OF INFORMATION BY FEDERAL AGENCIES

MONDAY, APRIL 29, 1985

House of Representatives,
Government Information, Justice,
and Agriculture Subcommittee
of the Committee on Government Operations,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:03 p.m., in room 2247, Rayburn House Office Building, Hon. Glenn English (chairman of the subcommittee) presiding.

Present: Representatives Glenn English, Gerald D. Kleczka, Stephen L. Neal, Jim Lightfoot, Joseph J. DioGuardi, and John R. Miller.

Also present: Robert M. Gellman, counsel; Euphon Metzger, clerk; and Gregory Kilgore, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN ENGLISH

Mr. **English.** The hearing will come to order.

This is the first in a series of hearings on the subject of electronic collection and dissemination of information by Federal agencies. We will be taking a broad look at the effect of new computer and communications technology on Government information activities.

I don't want to take the time to read my entire opening statement, but I do want to make a few points.

The capability and the expense of modern computerized information systems are forcing a reevaluation of the role of Government agencies in the dissemination of public information. That is the central issue at these hearings. Methods of data dissemination that have worked in the past may not be readily transferable to the electronic age.

Today, we will be concentrating on the EDGAR system at the Securities and Exchange Commission. We will also hear testimony on OMB's draft circular on information management.

EDGAR is just one of a number of electronic information systems now being operated by or planned for Federal agencies. Systems that fall within the scope of our present inquiry have two common features. First, information is stored in an electronic format that permits access through remote terminals. Second, information in the system is public information.

Electronic dissemination of data raises a series of information policy questions that we generally already know how to answer for the dissemination of paper documents. We have been distributing paper documents for 200 years, and any problems that arise are usually resolved because the reproduction of paper is cheap and easy.

The use of computer and communications technologies for handling information is much more complex. Electronic systems require considerable advanced planning and sizable capital expenditures. The issues of cost, access, and fairness raised by an electronic data system become more complicated as the capabilities of the system increase.

The Department of Agriculture's electronic dissemination of information [EDI] system is an example of a simpler distribution system. A more complex system is Medlars operated by the National Library of Medicine.

The EDGAR system at the SEC is even more ambitious. The SEC wants to collect and disseminate information electronically. The SEC is paying for the development of EDGAR's pilot system, but it wants a private vendor to pay the entire cost of the operational system. Users of the information—other than the SEC—are expected to provide the necessary revenues.

The SEC's approach to EDGAR is understandable. Federal funds are not readily available today. Finding other users that might be willing to pay the costs is an attractive idea.

It remains to be seen, however, whether the services that the SEC wants EDGAR to provide will match the information needs of others. If the demands of the SEC and the private sector do not match sufficiently, then the EDGAR contractor could lose a lot of money. EDGAR will cost over $50 million. Given all of the uncertainties, that is a huge investment.

Other agencies are considering information systems similar to EDGAR, including the Federal Maritime Commission and the Patent and Trademark Office. We will be looking at these systems in the near future.

I want to make it clear at the outset that I am neither for nor against any of the electronic information systems that we will be discussing. If I bring any preliminary conclusions to the hearing, it is that each agency and each information system must be judged on its own needs, operations and history.

A system that works well for one agency or for one industry might be inappropriate for another. One agency may be able to justify its own system, and another agency might do better by purchasing an existing or enhanced data system from the private sector.

I want to take note that another congressional committee has already done some detailed oversight into the operation of the EDGAR pilot system. We will not replow that ground today. We will be focusing our attention on where EDGAR is going rather than where it stands today.

[The opening statement of Mr. English follows:]

Opening Statement

CHAIRMAN GLENN ENGLISH

Hearings Before the

SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE

ELECTRONIC COLLECTION AND DISSEMINATION
OF INFORMATION BY FEDERAL AGENCIES

April 29, 1985

This is the first in a series of hearings on the subject of electronic collection and dissemination of information by federal agencies. We will be taking a broad look at the effect of new computer and communications technology on government information activities and practices.

The capability and the expense of modern computerized information systems are forcing a reevaluation of the role of government agencies in the dissemination of public information. That is the central issue at these hearings. Methods of information distribution that have worked in the past may not be equitably or economically transferable to the electronic age.

Today, we will be concentrating on the EDGAR system at the Securities and Exchange Commission. EDGAR, which stands for Electronic Data Gathering, Analysis, and Retrieval, is supposed to manage the millions of pages of documents that are filed with the SEC each year and, at the same time, permit wider access to SEC information.

EDGAR is just one of a number of electronic information collection and dissemination systems now being operated by or planned for federal agencies. Some of these systems are very similar to EDGAR because the data will be collected and disseminated electronically. Other agency systems only involve the electronic dissemination of data that has been collected by other means.

Electronic information systems that fall within the scope of our present inquiry have two common features. First, information is stored by the agency (or its contractor) in an electronic format that permits access to data through remote terminals. It is not essential that the data be collected electronically. Second, information in the system is public information. We are not interested at this time in computer systems containing information that is not in the public domain.

Last year, I placed a statement in the Congressional Record (March 14, 1984, page H1614) detailing many of the questions surrounding electronic information systems. At that time, I referred to the subject generally as "Electronic Filing". But after spending more time on the issue I realized that the filing or collection side was only one piece of the puzzle. That is why the title of today's hearing refers to both electronic collection and dissemination.

The electronic dissemination of public information raises a series of information policy questions that we generally already know how to answer for the dissemination of documents on paper (or other hard-copy formats). We have been distributing paper documents for 200 years, and the problems that do come up tend to be easily solved because reproduction of paper documents is relatively cheap, reproduction technology is widely available, and no large capital expenditures are required in order to copy or even print documents.

The use of computer and communications technologies for handling information is much more complex. Electronic systems require considerable advanced planning and sizeable capital expenditures. Providing access to data is no longer as simple as making a copy of a document. A user will need to have the proper hardware and software in order to access the data. User fees cannot be calculated based on a simple formula such as 10 cents per page.

Once electronic data systems have been established, however, they offer a great deal of flexibility. Data in an electronic data base can be readily indexed, abstracted, searched, and reformatted. These so-called value-added services increase the utility of a data base and permit the creation of new types of information.

The issues of cost, access, and fairness raised by an electronic data system become more complicated as the capabilities of the system increase. When an agency releases data in electronic formats to others, these issues are relatively simple to address. For example, the Department of Agriculture's Electronic Dissemination of Information (EDI) system makes perishable agricultural data available through a private vendor. It is a simple distribution system, with no collection or computational capabilities. The Census Bureau's CENDATA system is comparable in many respects.

More complex is a system such as MEDLARS (Medical Literature Analysis and Retrieval System) which is operated by the National Library of Medicine. MEDLARS is not just a simple information distribution system. MEDLARS was one of the first large computerized data bases, and it offers interactive, value-added, computer search services. It is available either through NLM or through private vendors. Some of the costs of MEDLARS are paid through charges to users or through leasing of computer tapes to private vendors. The cost of developing MEDLARS was borne entirely by the federal government.

The EDGAR system at the SEC is even more ambitious. The SEC wants to collect information electronically as well as disseminate it. The SEC is paying for the development of EDGAR's pilot system, but it wants a private vendor to pay the entire cost of the operational system. Users of the information -- other than the SEC -- are expected to provide the necessary revenues.

The SEC's approach to EDGAR is understandable. Federal funds to pay the more than $50 million dollar operating costs are not readily available. Finding other users of an electronic information system that might be willing to pay the costs is a very attractive idea. This is especially true because once a computerized system has been created for internal use, the marginal cost of providing interactive services to additional users is relatively small.

It remains to be seen whether the services that the SEC wants EDGAR to provide will match the information needs of other potential users. If the demands of the SEC and the private sector do not match sufficiently, then the contractor for EDGAR may lose a lot of money.

As an agency entangles its data systems and its finances with others outside the government, new difficulties arise. The agency must confront questions about the privitizing of government functions, preserving fair and equal access to public information, the rights and responsiblities of contractors, possible information monopolies, and competition between the government and the rapidly growing information industry. One very important -- and as yet unresolved -- question about EDGAR is whether any private company will be willing to invest over $50 million in it.

Other agencies are considering information systems similar to EDGAR. Perhaps most notable is the Automated Tariff Filing and Information (ATFI) system being planned by the Federal Maritime Commission. The Patent and Trademark Office is also in the middle of a large-scale automation of its patent and trademark records. We will be looking at these systems in the near future.

I want to make it clear at the start that I am neither for nor against any of the electronic information systems that we will be discussing. If I bring any preliminary conclusions to the hearing, it is that each agency and each information system must be judged on its own needs, operations, and history. A system that works well for one agency or for one industry might be inappropriate for another. One agency may be able to justify its own system and another agency might do better by purchasing an existing or enhanced data system from the private sector.

A major consequence of our general approach in these hearings is that we will probably spend little time looking at the technical questions that are raised by electronic computer and communications systems. We do not have the expertise necessary to determine if the systems can actually deliver all that is promised, whether the right technology is being used, or if there is adequate security.

Also, I am aware that another congressional committee has already done some very detailed oversight into the operation of the EDGAR pilot system and the contracting difficulties that have arisen. We will not replow that ground today. We will be concentrating our attention on where EDGAR is going rather than where it stands today.

Finally, I want to say a word about the draft OMB Circular on Management of Federal Information Resources. The draft contains basic information policy principles. I find it very difficult to evaluate these policies in the abstract. There is little to indicate how these policies would be applied by agencies in practice or what specific programs would be affected.

Somebody once wrote that, before building a wall, he wanted to know what he was walling in and what he was walling out. I think that sums up my attitude toward the draft circular.

Principles are nice, but they are very general as presented in the draft circular. I want to know which specific programs will be continued and which will be terminated. It would be easy to use the principles to argue for or against any existing information activity. I hope that the testimony today will help us to understand what is at stake.

ELECTRONIC FILING OF DOCUMENTS WITH THE GOVERNMENT: NEW TECHNOLOGY PRESENTS NEW PROBLEMS

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from Oklahoma (Mr. ENGLISH) is recognized for 10 minutes.

• Mr. **ENGLISH.** Mr. Speaker, advances in computer and telecommunications technologies and decreases in their costs offer Federal agencies opportunities to improve the flow and management of information. The Paperwork Reduction Act of 1980 recognized these advantages by encouraging the use of new information technologies to improve the efficiency of Government programs and to reduce the public paperwork burden.

During the past year or two, several agencies have begun to explore ways in which computer and telecommunications technologies can be incorporated into their operations to streamline data collection, storage and retrieval, and dissemination. The Patent and Trademark Office has signed several contracts for automating their trademark operations as a preliminary step to automating all operations. The Securities and Exchange Commission has issued a request for proposals for a pilot test of an electronic filing, processing, and dissemination system. The Federal Maritime Commission is also considering an electronic filing, storage, and retrieval system for tariffs.

Automation may offer an efficient way to manage the huge number of documents filed with and maintained by Federal agencies. The Patent and

Trademark Office receives over 100,000 patent and 60,000 trademark applications annually, and as many as 7 percent of the 24 million paper documents on file may be missing at any one time. The Securities and Exchange Commission requires 9,500 publicly held companies to file multiple disclosure documents each year. Current annual volume exceeds 6 million pages of paper.

Electronic filing of documents with Government agencies clearly holds the promise of savings, not only for the agencies, but perhaps also for those who file tariffs, registrations, patent applications, and other documents. But before we get carried away with the allure of Tom Swift and his all-electronic form 10-K, we have to recognize that there are some hard questions presented by the new technology.

Both the SEC and the FMC hope to develop systems that will be operated by private contractors at no cost to the Government. While cost-free filing systems are certainly attractive, we all recognize that the Government will not receive services for nothing. Contractors will receive compensation in some fashion. Who will bear the cost of electronic filing?

The Patent and Trademark Office has signed agreements with private companies for the automation of agency records at no cost to the Government. One aspect of these agreements requires the agency to deny Freedom of Information Act requests for the records in automated form. Is the agency obtaining services at the price of limiting public access to some of its records? Has the agency agreed with its contractors to limit competition in some fashion by restricting use of automated records?

We do not know the answer to these questions yet. In fact, I do not think that we can even be sure that we are asking all of the right questions. We need to think about the problems as well as the promises of electronic filing. It will be cheaper and fairer for everyone if we address the problems before they grow too large or too uncontrollable. If we do not take a hard look at electronic filing systems now, we will be sorry later.

The Subcommittee on Government Information, Justice, and Agriculture, which I chair, has begun an investigation into electronic filing systems. As a first step, I have put together a list of questions designed to identify the issues that are raised by electronic filing. The list is appended to this statement. It may help others concerned about electronic filing to sharpen their own thinking. At this preliminary stage, my goal is to define the issues first and then to decide how to seek answers. Anyone who shares my interest is invited to contact my subcommittee and help us in this process.

I do not want to leave anyone with the idea that I am opposed to electronic filing systems or that any of the agencies I have mentioned are doing anything improper. My purpose is to highlight a developing information technology and to begin to explore its real costs and its consequences. Ultimately, I hope that many agencies will be able to share in the benefits of the electronic age in a cost-effective fashion that is fair and equitable to all concerned.

QUESTIONS PRESENTED BY FEDERAL AGENCY PLANS TO ESTABLISH ELECTRONIC FILING SYSTEMS: A PRELIMINARY LIST

(A) Public Access:

(1) Will contractual arrangements for electronic filing curtail the ability of the public to have access to government documents now routinely made available in public to documents rooms or otherwise?

(2) Will contractual arrangements for electronic filing systems interfere with public access under the Freedom of Information Act?

(3) Will the maintenance of information in electronic form permit an expansion in the ability of the public to have direct access to public information in government files?

(B) Right and Responsibility of Contractors Operating Electronic Files on Behalf of Agencies:

(4) Is it realistic to expect contractors to operate electronic filing systems for agencies at no cost?

(5) Who owns the data in a contractor-operated electronic file?

(6) If a contractor loses a contract and is replaced by another contractor, what rights, if any, will the first contractor retain over data submitted during the course of the original contract?

(C) Rights and Responsibilities of Submitters:

(7) Will all submitters be required to file documents in electronic form?

(8) Will submitters be required to bear all costs of complying with electronic filing requirements?

(9) Will submitters be offered incentives to use electronic filing methods?

(10) Will submitters be required to convert any past filings to electronic form?

(D) Privitization of Government Functions:

(11) Will contractors operating electronic filing systems be asked or required to reject filings that do not comply with agency requirements? What will be the legal effect of such rejections?

(12) Will contractors operating electronic filing systems be asked to make decisions about the public availability of information or to process Freedom of Information Act request?

(E) Monopoly Issues:

(13) Will the granting of monopoly rights over information distribution be a necessary element of contracts for the operation of electronic filing systems?

(14) Do agencies have legal authority to grant contractors monopoly rights over information or information distribution?

(15) Will operators of electronic filing systems be able to require submitters to purchase the hardware or software necessary to permit electronic filing? How will distribution and pricing be controlled?

(F) Fairness:

(16) In order to induce a contractor to provide an electronic filing system at no cost to the government, will an agency restrict the rights of other parties? Will an agency reject Freedom of Information Act requests for some information, refuse to make information available in electronic form, or charge a high price for disclosure of data in electronic form?

(17) How will an agency prevent a contractor from using or redisclosing confidential data filed electronically?

(18) How will an agency prevent a contractor from using public information filed electronically in a way that will give the contractor an advantage over other information users who can only obtain the data later.

(19) Can the transition to an electronic filing system be conducted in a way so as not to unduly interfere with the operations of existing sellers and distributors of information?

(G) Archives:

(20) Is a record filed solely in electronic form considered to be a record for purposes of the Federal Records Act?

(21) If documents are filed electronically, what is the official agency record?

(22) How long must electronic records be maintained on-line, and how will the records be available when no longer on-line?

(23) How will electronic records be reviewed for archival retention, and in what form will the Archives maintain data deemed important for historical purposes.

(H) Miscellaneous:

(24) Is there a need for the establishment of some government-wide standards for electronic filing systems before different systems are developed independently by several agencies?

(25) Would the granting of exclusive distribution rights as whole or partial payment for the operation by a contractor of an electronic filing system constitute the sale of an agency asset? Would such a transaction violate the law or constitute an augmentation of appropriations?

(26) If an agency arranges through a contract or series of contracts for the operation of a computerized filing system, will there be a circumvention of the procedures required before an agency can acquire a computer for its use?

(27) Will the collection of information in electronic form through a contractor avoid or circumvent any of the requirements of the Paperwork Reduction Act?

(28) If different agencies develop electronic filing systems using different hardware, software, or other important features, will the result be inconsistent and incompatible electronic filing requirements and standards that will increase the costs to the government and the private sector?

(29) What computer security problems are presented by the establishment of electronic filing systems designed for remote telephonic access by multiple users?

(30) How will responsibility be assessed for errors in documents filed electronically? How will errors be identified?

(31) Will the introduction of electronic filing systems be accompanied by new or increased user charges? If so, who will bear the burden of the new charges?●

Mr. ENGLISH. Without objection, the opening statements of Mr. Kindness and Mr. Miller will be inserted in the record at this point.

[The opening statements of Mr. Kindness and Mr. Miller follow:]

CONGRESSMAN THOMAS N. KINDNESS APRIL 29, 1985
8TH DISTRICT, OHIO

MR. CHAIRMAN, THE ISSUES WE WILL ADDRESS TODAY OF ARE OF CONSIDERABLE IMPORTANCE NOT ONLY TO THE FEDERAL GOVERNMENT, BUT TO THE PUBLIC AS WELL. THE MANNER IN WHICH THE GOVERNMENT COLLECTS, DISSEMINATES AND MANAGES INFORMATION CAN HAVE A PROFOUND EFFECT ON EVERY CITIZEN. FOR THESE REASONS WE MUST CONSIDER CAREFULLY AND THOROUGHLY THAT WHICH IS PRESENTED TO US TODAY.

AS WE ARE ALL AWARE, OUR SOCIETY IS RAPIDLY MOVING TOWARD A HIGHLY TECHNOLOGICAL STANDARD OF OPERATION. IT SEEMS THAT ALMOST ON A DAILY BASIS WE ARE CONFRONTED WITH NEW TECHNOLOGIES WHICH HAVE CAPABILITIES TO MAKE DIFFICULT TASKS SIMPLE. WE ARE ALSO INFORMED, ALMOST ON A DAILY BASIS, THAT THE FEDERAL GOVERNMENT MUST MAKE USE OF THESE TECHNOLOGIES AND THAT THE PRIVATE SECTOR IS FAR AHEAD OF THE GOVERNMENT IN THE USES OF STATE-OF-THE-ART TECHNOLOGY.

THERE MAY WELL BE SOME MERIT TO THESE STATEMENTS. I SUPPORT THE CONCEPT OF INCREASING GOVERNMENT EFFICIENCY THROUGH GREATER USE OF TECHNOLOGY. I ALSO SUPPORT INCREASED EFFICIENCY THROUGH THE BETTER MANAGEMENT OF EXISTING RESOURCES. HOWEVER, IN CONSIDERING THE NEEDS FOR INCREASED USAGE OF ADVANCED TECHNOLOGY IN GOVERNMENT, THERE ARE ISSUES TO BE ADDRESSED WHICH OFTEN DO NOT APPLY IN THE PRIVATE SECTOR. THESE ISSUES OF PUBLIC POLICY MUST BE BASIC TO ANY DECISION WHICH IS MADE.

IN OUR SCURTINY OF THE SECURITY AND EXCHANGE COMMISSION'S PLANS TO IMPLEMENT ITS ELECTRONIC INFORMATION SYSTEM, WE MUST BE ATTENTIVE TO QUESTIONS LIKE THESE:

- IS THIS SYSTEM REALLY NECESSARY?

- HAS THE PILOT SYSTEM PROVEN THAT IT IS EVEN VIABLE?

- WHO WOULD BE BENEFITED BY THE SYSTEM, AND WHO WOULD BE HURT BY IT?

-- WHAT EFFECTS WOULD THIS SYSTEM HAVE ON THE FINANCIAL COMMUNITY, AND ON THOSE INDUSTRIES AND CONCERNS WHICH SUPPORT IT?

-- HOW WOULD THIS SYSTEM AFFECT CITIZEN ACCESS TO SEC DATA UNDER THE FREEDOM OF INFORMATION ACT?

-- WHAT CONTROLS WOULD THE AGENCY RETAIN OVER THE SYSTEM?

MR. CHAIRMAN, I COMMEND YOU FOR PURSUING THIS VERY IMPORTANT MATTER. I JOIN YOU IN WELCOMING TODAY'S WITNESSES, AND I LOOK FORWARD TO HEARING THEIR VIEWS.

OPENING STATEMENT

THE HONORABLE JOHN MILLER

Mr. Chairman, thank you for requesting this hearing today on the electronic collection and dissemination of information by Federal agencies, particularly by the Securities and Exchange Commission. This topic is a timely issue as the Federal government looks for ways to improve the efficiency of its programs and to reduce the paperwork burden.

While computer technologies offer great potential for Federal agency improvements in the collection and dissemination of information, a number of issues should be resolved before the Federal government proceeds with full scale automation. Questions concerning the financial arrangements for the system, the relationship between the agency and contractor, and the flow of this information to the public should be carefully examined today and in future Subcommittee hearings.

Mr. Chairman, I appreciate the opportunity to consider these issues today and I look forward to hearing the testimony of our witnesses.

Thank you.

John R. Miller

Mr. **English**. We have as our first witness Mr. John S.R. Shad, Chairman of the Securities and Exchange Commission.

Mr. Shad, please introduce those people with you.

STATEMENT OF JOHN S.R. SHAD, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION, ACCOMPANIED BY KENNETH A. FOGASH, DEPUTY EXECUTIVE DIRECTOR, AND AMY L. GOODMAN, ASSOCIATE DIRECTOR, DIVISION OF CORPORATE FINANCE

Mr. **Shad**. I hope you will bear with me. I have a bad cold. I am going to try to enunciate clearly.

Mr. **English**. I had one of those 3 weeks ago. I know what you are going through.

Mr. **Shad**. With me is Kenneth Fogash, Deputy Executive Director of the SEC; and Amy Goodman, Associate Director of the Division of Corporate Finance, which is the principal user, initially within the SEC, of the EDGAR system.

I appreciate this opportunity to testify concerning EDGAR, which, as you have indicated, is the Securities and Exchange Commission's electronic disclosure system. It is requested that the Commission's written statement be included in the record.

Mr. **English**. Yes, sir.

Mr. **Shad**. The SEC's mandate is investor protection and the maintenance of fair and orderly markets. The securities laws require companies that wish to raise money from the public and those that publicly trade securities to make timely, public disclosures of financial and other information. There have been no fundamental improvements in the manner in which such information is filed with the SEC or publicly disseminated since the securities laws were enacted half a century ago.

EDGAR is intended to accelerate dramatically the filing, processing, dissemination, and analysis of corporate information, and increase the efficiency and fairness of the securities markets. As corporate information is filed with the commission, investors, security analysts and others will have instant access to it on home and office computer screens. A single filing with the SEC will also serve the 50-State securities commissions, the securities exchanges, and other self-regulatory organizations.

EDGAR will enable the Commission's staff to process much more efficiently the mounting volume of documents filed annually—about 6 million pages this year, and rising every year. It will also save the 10,000 publicly-owned corporations, investors and others time and expense by eliminating the frequent need to transfer data manually from one format to another.

Full-scale implementation of EDGAR is intended to coordinate with the rapid growth of home computers from over 16 million today to twice that many in less than 5 years. Two years ago, in February 1983, I formed a staff task force to study means of increasing Commission productivity and the feasibility of an electronic filing system. Numerous meetings were held with electronic hard and software experts and the Mitre Corp., which is assisting the Patent and Trademark Office in a several hundred million dollar electronic data processing project. The FBI was also consulted concerning the security of such a system.

Once satisfied that electronic disclosure systems were feasible, and could be produced or implemented with existing hard and software, I requested the staff to initiate a 2-year pilot operation to test the concept and technology.

In January 1984, bids were solicited for the development of the EDGAR pilot system. The contract was awarded to a team consisting of Arthur Andersen & Co., IBM, and Dow Jones & Co. The pilot system accepted its first electronic filing on schedule on September 24, 1984.

Over the past 7 months, the results have been excellent. The 150 corporations participating in the pilot range from AT&T, Exxon, General Motors, IBM and other major industrial, utility and financial corporations to small companies, and even limited partnerships. Participants have filed over 800 documents directly over telephone lines, on diskettes, and magnetic tapes.

I would like to emphasize, Chairman English, in terms of the compatibility of the system with other systems, that one of the unique features of EDGAR is that it is capable of receiving diskettes prepared on 85 different word processors or personal computers and we can also receive information over the telephone lines from many different types of communications equipment, so that it is really a remarkably adaptable system, and effectively could operate intergovernmentally as well as with the registrants of the SEC.

Public access to the pilot filings is available through terminals in the Commission's Washington, Chicago, and New York public reference rooms. Computer-generated microfiche are produced overnight—2 to 3 weeks faster than for paper filings.

Staff reviews are also faster because the documents are available instantly at computer work stations, as are external data bases, which expedite research of complex legal and accounting matters and electronic mail, which expedites responses to registrants.

The benefits to companies are that it accelerates their access to the capital markets and the dissemination of their information to investors. Also, electronic fee payment capabilities are included, and the Commission is experimenting with image processing and encrypting devices.

Three State securities commissions—California, Georgia and Wisconsin—are also now participating in the EDGAR pilot. The Commission is proceeding with a view to phasing in all 10,000 SEC registrants between next year, 1986, and the end of 1988.

With regard to financing the operational system, for the past 17 years paper and microfiche copies of SEC filings have been disseminated to the public by a private vendor under a no-cost contract. The vendor provides the Commission with microfiche and disseminates the information to the public under a rate structure supervised by the Commission.

The Comptroller General has ruled favorably on such arrangements. Examples include the EPA and other agencies, stenographic reporting and dissemination services.

Two facets of financing the EDGAR operational system are the source of funds and the cost recovery. Sources of funds include appropriations and user fees. If appropriations were used, it would amount to an estimated $18.7 million in 1987 and an additional $40 million over the following 4 years.

In view of budgetary constraints, the SEC's favorable experience with its present system and other precedents, user fees appear to be an appropriate approach. Such fees could be structured to include or exclude various costs.

Under a cost-sharing contract, the operational contractor might recover its investment through bulk sales of the data to others at rates regulated by the Commission. A contractor might also sell value-added services in competition with others.

In order to refine these issues, in June the SEC staff plans to submit to the Commission for approval and public release a presolicitation document which will include the information normally provided in formal requests for proposals. The formal requests will be published in the fall.

In conjunction with auxiliary services, the operational EDGAR system will enable investors, for example, to display all the listed stocks that closed yesterday at less than seven times earnings, that yield over 6 percent; instantly refine such lists by industry size, markets, and other criteria; display the latest SEC filings, annual and quarterly reports of those companies that appear to be undervalued; retain their portfolios in their data banks, and price them to the market at any time; maintain running totals of their dividends, realized and unrealized capital gains and losses; and enter orders with their brokers directly on their own computer terminals and receive confirmations.

Telecommunications technology has dramatically improved the domestic and international securities markets. It has permitted global trading in so-called world class securities, high-speed electronic execution and confirmation of the record volume of security transactions and financings, and savings of over $350 million per annum through the use of electronic book entry delivery systems.

EDGAR is the next step. It will revolutionize the manner in which many investment decisions are made and executed, accelerate corporations' access to the capital markets, and increase the efficiency and the fairness of such markets.

Thank you.

[The prepared statement of Mr. Shad follows:]

STATEMENT OF THE HONORABLE JOHN S.R. SHAD, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION, BEFORE THE SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

CONCERNING EDGAR

April 29, 1985

STATEMENT OF THE HONORABLE JOHN S.R. SHAD, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION, BEFORE THE SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS CONCERNING EDGAR

April 29, 1985

Chairman English and Members of the Subcommittee:

I. Introduction

This statement discusses Edgar -- the Commission's electronic disclosure system -- and issues related to the electronic collection, processing and dissemination of corporate information. Edgar is intended to increase the efficiency and fairness of the securities markets by accelerating dramatically the filing, processing, dissemination and analysis of corporate information. As such information is filed with the Commission, Edgar will afford investors, securities analysts and others instant access to the information on home and office computer screens.

Edgar has the potential to revolutionize the manner in which investment decisions are made and executed. 1/

Telecommunication technology has enabled the securities industry to move from 20 to 100 million share trading days without incident and to accommodate global trading in so-called "world class" securities. However, the filing and dissemination of corporate information has not changed significantly in

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1/ N.Y. Times, Sept. 25, 1984, at D-1; Time, Oct. 8, 1984, at 60. See also, Ipsen, "The Edgar Revolution," Institutional Investor, at 98, 100 (Sept. 1984). (A copy of the latter article is contained in Appendix A.)

50 years. Thus, Edgar is the next step in the application of telecommunications technology to the securities markets.

The reasons for Edgar are:

- To increase the efficiency and fairness of the securities markets by affording investors, securities analysts and others instant access to corporate information.
- To accelerate corporations' access to the capital markets and the dissemination of their information to investors.
- To enhance the Commission's ability to protect investors and maintain fair and orderly markets.
- To enhance the state securities commissions' regulatory activities and the self-regulatory organizations' marketplace surveillance capabilities.
- To accelerate the Commission staff's ability to process and analyze corporate filings more efficiently at computer work stations.
- To reduce errors and other costs by eliminating the frequent need to transfer data manually from one format to another.

II. Development of Edgar

The Commission was created to administer the federal securities laws which seek to provide protection for investors, in large part, through the full disclosure of the information necessary to permit informed investment decisions. 2/ These laws require companies that wish to raise money from the public and those that have publicly traded securities to make public disclosures of financial and other information.

Currently, corporate disclosure documents are prepared, typed and proofread at corporate headquarters and law firms; delivered to financial printers; printed, proofed and reproduced on paper; and shipped to the Commission, underwriters and others in bulk quantities. At the Commission, they are logged-in, microfiched, reviewed and made available to the public, including private vendors and others that manually key some of the information into computerized data bases to facilitate analysis and recall. Such filing and dissemination typically takes 30 to 90 days and requires manual handling of the six million pages received by the Commission each year.

Under Edgar, the information can be prepared, proofed and electronically transmitted directly from the preparer's word processor or computer into the Commission's computer where it will be instantly accessible to users. It will not have to be manually keyed into computer data bases for analysis and recall. Thus, Edgar is intended to reduce the present

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2/ These laws are the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. In addition, the Commission has responsibilities under the federal bankruptcy laws.

30 to 90 day process to a few days, reduce errors and increase the effective utilization of the information.

Full scale implementation of Edgar is also intended to coordinate with the rapid growth of home computers, from over sixteen million today to twice that many in less than five years. 3/

Work on the Edgar project has been under way at the Commission for more than two years. In February 1983, the Chairman formed a task force of key Commission personnel to study means of increasing Commission productivity and the feasibility of an electronic filing system. Advanced telecommunications technology is being employed throughout the securities industry, but the means of disseminating information under the federal securities laws have not changed significantly in the 50 years since their passage.

To gather additional information on the feasibility of an electronic system, in April 1983, the Commission published a "Sources Sought" release for an experimental "paperless" electronic filing, storage and retrieval system. 4/ Over twenty written responses were received. Meetings were held

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3/ Estimates provided to the Commission staff by Future Computing, Richardson, Texas, a market research firm.

4/ Commerce Business Daily, April 7, 1983. The Commerce Business Daily, a publication of the U.S. Department of Commerce, publishes notices of procurements that are to be let and notices of awards that have been made.

with interested vendors. It was concluded that a number of significant questions needed to be explored, but that a paperless filing system was technically feasible.

In September 1983, the MITRE Corporation was engaged to assist in the analysis. MITRE is a private not-for-profit organization that operates under the rules of a Federally Funded Research and Development Center. MITRE was assisting the U.S. Patent and Trademark Office on a several hundred million dollar computerized patent library. The knowledge gained from that project was readily transferable to Edgar. The FBI also was consulted on security considerations.

Once satisfied that an electronic disclosure system was feasible, using existing technology and hardware, the Chairman requested that the staff initiate a pilot operation to test various approaches and technology. By November 1983, the staff had developed the configuration of the pilot Edgar system ("Pilot"). In January 1984, bids were solicited. On-site inspections and interviews were conducted by the Commission staff with the four bidders. In May 1984, a contract for development and operation of a two-year Pilot was awarded to a team consisting of Arthur Andersen and Company, International Business Machines ("IBM") and Dow Jones and Company. The Commission's Office of the General Counsel has reviewed the procurement record and confirmed that it was in accordance with applicable law and procurement regulations.

The Pilot accepted its first electronic filing on September 24, 1984, on schedule. The results have been very positive and virtually trouble-free.

III. The Edgar Pilot

A. Volunteer Companies

In developing the pilot Edgar system, it was determined that the Pilot would begin with the filings of a small number of volunteer companies. Additional volunteers would be added over the two-year life of the Pilot.

To obtain indications of interest in participating in the Pilot, the Commission published a release in March 1984, discussing the system. 5/ It requested that interested companies complete a questionnaire and it invited comments from securities analysts, other potential users, registrants and others regarding estimated benefits and costs of the system, and how the information would be used. Over 300 completed questionnaires were received. The staff contacted interested companies in August 1984, and discussed the mechanics of participating in the Pilot.

Of the 150 companies that have agreed to participate in the Pilot, 134 have already made filings. They represent a broad cross-section of registrants, ranging from AT&T, Exxon,

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5/ Release No. 33-6519 (March 22, 1984) [49 Fed. Reg. 12,707].

General Motors, IBM and other major industrial, utility and financial corporations to small companies and limited partnerships.

B. Temporary Rules

To facilitate operation of the Pilot, the Commission adopted temporary rules that adjust certain procedural regulations. 6/ They address such matters as signatures, exhibits and filing fees. With respect to signatures for direct transmission filings, it was determined to use personal identification numbers (PINs) on a pilot basis. Alternative methods of handling signatures in an electronic environment are under development. A new form, Form SE, was adopted to permit the filing of paper exhibits if it is impracticable to convert them to an electronic format. The Commission also developed a procedure whereby fees for Edgar direct transmission filers are paid by wire transfer or by mail to a lock box. 7/ In addition, the Commission authorized the staff to issue a set of directions for Edgar filers that spells out technical procedures for making electronic filings. These directions to filers are contained in an Edgar User Manual that contains guidance on how to use the system.

6/ Release No. 33-6539 (June 27, 1984) [49 Fed. Reg. 28,044].

7/ Release No. 33-6540 (June 27, 1984) [49 Fed. Reg. 27,306].

It includes simple formatting requirements, which the staff has attempted to keep to a minimum. The User Manual is provided to all participants, to law and accounting firms and to financial printers. It is updated as experience is gained in the Pilot.

C. Experience with the Pilot

The Commission's experience with the Pilot and that of the volunteer companies has been highly successful. Since the first filing, on September 24, 1984, the Commission has received, through April 19, 1985, 844 filings.

Filings are accepted in three different electronic media: (1) direct transmissions over telephone lines or two public networks using a number of different communication protocols (47 percent); (2) diskettes prepared on over eighty-five different types of word processors or personal computers (49 percent); and (3) magnetic tapes (4 percent). The aim of accepting this wide variety of media is to keep the cost of participation low to registrants by permitting them to use their existing equipment. Although this was one of the most technically difficult aspects of developing the system, it has worked very well in practice.

Some pilot participants are taking advantage of the Pilot to test all permitted media -- diskettes, magnetic tapes and several types of direct transmissions, both direct and through financial printers, to determine which works best for them. The staff is also working closely with the financial printing industry to ensure smooth electronic submission of documents directly from printers.

Under the Pilot, as will be the case in the operational system, the contractor manages the receipt function under the supervision and direction of Commission staff. The contractor does not exercise discretion. Decisions to accept or reject filings are made by Commission personnel, as is the case with paper filings.

Electronic dissemination to the public under the Pilot is through computer terminals in the Commission's Public Reference Rooms in Washington, Chicago and New York City, and the Press Room in Washington. In addition, computer generated microfiche is produced overnight so that dissemination is made in the same manner as paper filings. However, the microfiche of electronic filings is produced 14 to 20 days faster than for paper filings.

The electronic filings are processed by a new Pilot Branch in the Division of Corporation Finance, staffed by experienced Commission personnel who volunteered to work on the Pilot and are actively involved in its development. These staff members process the filings at computer work stations that permit instant access to external legal, accounting and other data bases, word processing and spreadsheet capabilities.

The same criteria for review are applied to both electronic and paper filings, but it is easier and faster to review Edgar filings. The instant availability of filings and external data bases at the work stations expedites review. Edgar also facilitates the management of resources by automating workload statistics and other management information.

The benefits to participating companies are that their filings are received, reviewed and commented upon faster. For example, General Motors Acceptance Corporation, which is one of the most frequent Edgar filers, has indicated that Edgar has enabled them to respond more rapidly to changing market conditions, and get to the market faster.

The Pilot is being enhanced continuously in a phased approach. Most recently, internal and external electronic mail capabilities were added. The latter will accelerate the comment process. Future additions include the ability to do full text searches of the filed information. Work is also under way on the indexing of financial statements to permit quick retrieval of individual line items and analysis of the data. This will assist in the creation of financial profiles and ratios useful to both the Commission and the investing public.

Steps are also being taken to include the state securities administrators, the securities exchanges and the National Association of Securities Dealers ("NASD") in the Edgar system. The North American Securities Administrators Association ("NASAA") 8/ adopted a resolution in support of Edgar in September 1984, and chose three states, California, Georgia and Wisconsin, to participate in the Pilot. These states' access to pilot filings in their respective offices, began on February 15, 1985. Discussions also have been held with the exchanges and the NASD regarding their access to the data to ensure that Edgar meets their needs. In the operational system, a single filing with the Commission will suffice for all the states, the exchanges and the NASD. This will reduce the cost of financings, accelerate the dissemination of information and enhance investor protections.

IV. Expansion of Edgar to Other Parts of the Commission

In preparation for the issuance of the request for proposals for the operational Edgar system, demonstration projects are being conducted in headquarter Divisions and

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8/ NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, the Canadian provinces and territories, and Mexico.

offices and regional offices. Some of these projects also expand microcomputer applications that have been used by the Commission for several years. A small number of computer work stations are being used to test various automation methods in each project.

These projects include: (1) the Division of Enforcement's use of computer work stations to support investigations, including spreadsheets to analyze trading patterns, markups and markdowns; (2) the Directorate of Economic and Policy Analysis's experimentation with moving information from the Commission's mainframe computer to computer work stations so that complicated statistical analysis can be performed without tying up the mainframe; (3) the use by the Division of Investment Management, in conjunction with the Washington Regional Office, of work stations to review investment company and adviser inspection reports, prepared on portable computers by the regional office and transmitted electronically to the Division; and (4) the Chicago Regional Office's use of computer work stations to support investigations and its plan to test the receipt and processing of Form S-18s, a simplified registration form for small issuers.

In addition, a test is being conducted in which the office responsible for coordinating the Freedom of Information Act ("FOIA") has work stations electronically linked to the principal program offices involved in FOIA responses. Upon receiving the initial request, a notice is immediately transmitted to the appropriate reviewer. In the case of multiple reviewers, simultaneous transmission is accomplished, including the regional offices. The request is also logged into an electronic data base for tracking. Any background information needed for the review is ordered electronically. Savings are already being realized in processing time and expenses.

Another aspect of the demonstration projects is experiments with a variety of optical character recognition devices. These demonstration projects will help develop the specifications for the request for proposals.

V. Operational Edgar

Based on its positive experience with the Pilot, the Commission is moving forward with plans for a fully operational Edgar system that will involve nearly all Commission Divisions and encompass all required filings. In addition to expanding electronic receipt and internal processing capabilities, the operational system will offer widespread, instantaneous electronic dissemination.

A. Financing

Since 1968, the Commission's dissemination to the public of paper and microfiche copies of filings has been efficiently operated under a no-cost contract with a private vendor. This arrangement, which has been in place for seventeen years, currently provides the Commission with four sets of microfiche, including an archival set, in return for providing the vendor with an original of most filings the Commission receives. 9/ The vesting in a contractor by the government of control over the dissemination of information is a long accepted practice, as evidenced by contracts for stenographic reporting services which are structured to grant to contractors the exclusive right to sell their products directly to the public. 10/ In addition, other government agencies use outside contractors to conduct their dissemination function. 11/ The Commission's Office of the General Counsel has carefully researched this area and concluded that such arrangements are legally sound. 12/

9/ In addition to this basic service, the vendor offers the public additional services, including toll free numbers, billing upon delivery, and expedited 24-hour service, which substantially increased availability of these documents to the public.

10/ *See*, *e.g.*, 7 Comp. Gen. 810 (1928).

11/ *In Matter of Retention of Fees Received by EPA Contractors Providing Information Services to the Public*, Comp. Gen. Dec. B-166506, Oct. 20, 1975.

12/ Office of the General Counsel Opinion, March 12, 1985, Appendix B.

Two facets of the issue of financing the operational system are: (1) the sources of revenue to finance the system, and (2) whether cost recovery is appropriate.

The alternative sources of revenues include: (1) appropriated funds, (2) filer fees, and (3) user fees. Appropriated funds present an obstacle in view of the serious budgetary constraints facing all agencies. If appropriations were required to finance the operational system, the estimated requirements would be $18.7 million in fiscal year 1987 and an additional $40 million over the following four years. Convinced of the data's economic value, the financing precedent of the current dissemination system, and the belief that the system offers substantial benefits to both filers and investors alike, it initially was determined that a form of user fees is the most desirable.

Filers already make a significant contribution through existing fees. Registration fees amounted to $68 million and $60.1 million in fiscal 1983 and 1984, respectively. In addition, the Commission exercises no control over these fees, which are a function of the volume of filings and are remitted to the United States Treasury.

End users of the data will be the primary beneficiaries of the operational system. They are therefore an appropriate source of the funding. Again, the present dissemination system is financed by user fees.

The issue of cost recovery in the operational system depends, in part, upon the revenue source selected. If appropriated funds are used to construct the operational system, a wide range of cost recovery options is available. Depending upon the objectives to be served, the ultimate price of the disseminated information could be structured to include or exclude various costs of the system.

To obtain public input on these issues, the Commission, on September 5, 1984, issued a release requesting comment on approaches to managing and financing the operational contract. 13/ The release noted: (1) the Commission's information dissemination mandates; (2) the contractor's adequate cost recovery; (3) the maintenance of competition; and (4) at the completion of the contract, the ability to recompete and replace the contractor. It emphasized the Commission's concern that a balance be struck that permits the contractor to recover its investment and operating expenses and earn a reasonable profit level, while at the same time ensuring that there are no anti-competitive biases in the rate structure. In this regard, the Commission inquired as to:

- how the contractor would be required to provide the information to other vendors;

13/ Release No. 33-6548 (Sept. 5, 1984) [49 Fed. Reg. 35,798].

- how or whether secondary vendors would be able to resell the information; and
- whether the contractor should be able to offer value added services or only serve as a wholesaler of the bulk data. Value added services are those which offer some benefit in addition to simple presentation of the data filed (i.e., historical comparisons as to an issuer or comparisons with other issuers, etc.)

The release also contained information from a study the Commission had undertaken to determine the marketability of the Edgar data base. 14/ The study indicates that there are significant interest and potentially large revenues associated with such a product.

Since issuance of the release, the ways in which other government agencies, such as the National Library of Medicine and others, have approached similar issues have been explored. In addition, the comment letters received on the September release, primarily from those engaged in the information industry, were studied.

Currently, the Commission does not anticipate seeking appropriated funds for the expansion of the Pilot system

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14/ The survey was prepared by Mathematica Policy Research, Inc. under a contract awarded by the Commission in May 1984.

into the operational system. Nevertheless, it will not be necessary to have user fees pay for all of the operational system, because the hardware and software purchased under the Pilot will be made available to the operational contractor. The value of this shared hardware and software is estimated to be approximately $9 million. Consequently, a cost sharing contract is envisioned in which the operational contractor will recover its investment for electronic receipt, processing and dissemination through the sale of the data to users. It is contemplated that no restriction would be placed on the contractor with regard to the sale of value added services in competition with other providers of such services. Further, it is contemplated that the contractor would be required to sell the bulk data base, on an "instant feed" basis to other vendors.

To obtain further input on these issues, the staff plans to submit to the Commission for approval and release a preliminary request for proposals in June 1985, with publication of the formal request for proposals in the early fall. This preliminary document will contain the information normally provided in a request for proposals. It will describe the Commission's plans for system functions, sizing, operation, funding, commercial dissemination, mandatory filer phase-in and expansion to other Commission Divisions and Offices. Any restrictions on the contractor and secondary vendors also will be described.

Review and comment by the public, filers and potential system users, as well as by prospective bidders will be encouraged. Opportunity will be provided for oral presentations, as well as written comments.

In addition to benefits from increased public comment on a specific proposal, the Commission will benefit from several additional months of experience with the Pilot. At the same time, publication of the formal request for proposals in the early fall will not delay the timetable for system implementation. Since prospective bidders will be provided a clear statement of the Commission's plans, it will be possible to reduce the proposal preparation period as well as the transition period from the pilot to the operational system. The phase-in of all registrants filing corporate disclosure documents then will begin in 1986, with an anticipated completion date of the end of 1988.

B. Implications

When Edgar is fully implemented, investors' access to disclosure information in Commission public reference rooms throughout the country will be improved. Where it now may take several weeks for the microfiche copies of paper filings to reach such public reference rooms, with Edgar, the public will have access to the electronic filings as they are accepted. And, of course, paper and microfiche copies of the electronic filings will continue to be available. In addition, the distribution of prospectuses and proxy material directly to investors by corporations will continue to be made in paper. Thus, Edgar will accelerate the dissemination of corporate information and supplement and improve the current system.

Edgar will integrate with existing software and other services, that will, for example, enable investors to:

- display all the listed stocks that closed yesterday at less than seven times earnings, that yield over 6%, etc.;
- instantly refine such lists by industry, size, markets and other criteria;
- display the latest SEC filings, annual and quarterly reports on those companies in which they are interested or that appear to be the most undervalued;
- retain their portfolios in their data banks and price them to the market at any time;
- maintain running totals of their dividends, realized and unrealized capital gains and losses; and
- enter orders with their brokers, directly on their own computer terminals and receive confirmations.

Additional potential benefits of Edgar to the securities markets include the folowing:

- By making timely investment information more readily available, Edgar could increase investor interest in securities, and thereby increase the breadth of equity ownership and market liquidity.

- Edgar could improve the market for the stocks of less widely followed companies. It presently is difficult for analysts and market-makers to follow inactive securities.
- Information about larger companies also will be available faster and more readily in a computerized form.
- Instant access to a broad range of information will enable investors to make better informed investment decisions.
- Disclosure documents will be processed more rapidly by the SEC, thus reducing unnecessary and costly delays in public offerings of securities.

In short, Edgar has the potential to increase the efficiency and fairness of the nation's securities markets.

VI. Conclusion

Computer technology is changing the way that the securities markets operate, from automated order facilities to around-the-clock trading. With Edgar, the Commission is anticipating the disclosure dissemination needs of the future. Through the use of state-of-the-art computer technology, the availability of information will be enhanced thereby improving the efficiency of the securities markets and investor protection.

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Institutional Investor, September, 1984 issue

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> **"Whoever gives their analysts PCs and access to EDGAR first will perhaps be more competitive than the firm down the street."**

mainframe computer that lies at the heart of the EDGAR system. And they will do so electronically, over phone lines. That will enable the commission's staff not only to analyze that vast inflow on a screen but to send any comments they may have back to the filer via electronic mail and to receive the corrected document via the same speedy route — making life a lot simpler at both ends of the line. "I'm all for it," says Ronald Saltman, assistant general counsel at Hospital Corp. of America, which has volunteered to participate in the EDGAR start-up. "I just think it will make my job easier and more foolproof."

The system will also make life a lot easier at the SEC, where Lee Spencer, the former head of the corporate finance division, charges that "they have more filings to review than they possibly can." The current method for coping with that problem is painfully simple. "You prioritize your filings [in terms of which will be reviewed]; you assign people; and when you run out of people, you stop reviewing," says Spencer. By automating that procedure — by putting terminals linked to EDGAR on every reviewer's desk — the commission hopes to eliminate the hours upon hours its staffers must now devote to tracking down hard copies of current and past filings and thus to greatly enlarge its enforcement capacity.

Mind-boggling opportunities

The real EDGAR revolution, however, will come in the next stage of the system's evolution — two or three years from now — when filings submitted to and approved by the commission can instantly be put on-line to anyone with a personal computer. With 10,000 companies currently submitting filings to the SEC, the electronic data base that EDGAR could ultimately generate would undoubtedly qualify as the richest mine of information anywhere on public companies. Its inclusiveness, its timeliness and the fact that it exists in electronic (machine readable) form will combine to present mind-boggling opportunities for all varieties of data manipulation and screening.

For many consumers of that information, such as institutional and individual investors as well as analysts, the system holds great promise. "I would love to be able to do much of the screening and research ourselves on the computer," says Stephen Timbers, chief investment officer for the Portfolio Group, Chemical Bank's billion-dollar money management subsidiary. "We could then call up an analyst and say, 'From analyzing the latest data, such-and-such company looks really terrific; what do you think?' " As Timbers sees it, EDGAR would not be used to cut the analyst's firm out of the action; it would simply enhance the relationship for both sides. On the one hand, he calculates that an institution's "don't call me, I'll call you" approach for making specific company queries would save the Wall Street analyst valuable time: It would allow him to do more research and less selling. On the other hand, Timbers believes that it would save the money manager time by slashing the hours he now spends fielding calls from institutional salesmen.

EDGAR could also prove to be a major boon to money managers by shaving crucial hours, or even days, off their decision-making time. William Gross, a managing director with Pacific Investment Management Co., complains that all too often he gets calls from people who are hawking freshly minted secondary debt issues or public stock offerings. "They need a quick decision, but many times all we have is two- or three-month-old data in a Moody's supplement, and that's just not enough information to base a decision on," admits Gross. "I think EDGAR will permit quicker analysis and ultimately will also bring more efficient pricing as more and more institutions are drawn into the market for initial offerings and/or lower-quality issues." In essence, the system could help prospective buyers of securities catch up to the fast and furious pace that SEC Rule 415 now affords many issuers of those securities.

Although the SEC received only 240 positive responses to questionnaires about EDGAR it sent out this spring to 10,000 companies, many corporate officials believe that they, too, will have a fair amount to gain from the system. Electronic reporting will alleviate, for example, the mountains of paper that have been a major headache for years. Guy Cichone, the operations manager in the securities financing department at BellSouth Corp., for one, maintains that the electronic format will make it much easier for him to review and coordinate the filings of his firm's two subsidiaries. And at HCA, Saltman looks forward to the day when he won't have to air-express twelve copies of his registration statements to Washington and worry about whether the plane takes off or if they will be accepted. "No matter how good your Xerox machine is, every once in a while it's going to skip a page, and the clerk at the SEC is going to notice that and say, 'Sorry, but I can't accept your filing,' " he laments. "With hard copies, all sorts of things can go wrong."

As many a corporate finance officer knows, those sorts of foul-ups have an all too easy way of translating into lengthy delays and lost opportunities. "If they don't have to worry about getting the document down here by courier and getting our comment letter, it will allow corporations to go to market faster and thus to take better advantage of market windows," says Amy Goodman, associate director of the EDGAR project at the SEC.

A large slice of corporate America could also discover that EDGAR will not only increase the pace at which they can go to market with new issues but that it will also have an impact on the reception they find once they get there. "Data on smaller companies is not distributed as widely," observes F. Van Kasper, head of the San Francisco brokerage that bears his name. "An analyst sitting in New York may be curious about a small company in Phoenix, but he may never have the time to satisfy that curiosity. But with EDGAR, he could just lean over his terminal, punch a few buttons and get the data right off the screen." Adds Daniel Sprinzler, vice president and treasurer of S.S. Pierce Co., a Dundee, New York–based food company, "Being on the system would have some definite advantages, particularly if you want to make your company's progress known to more people."

The leads and lags that can now be seen in the markets' reactions to corporate news will also surely be affected by the instant and widespread availability of filings. Most analysts, of course, maintain that if they are doing their jobs, the SEC filings made by the companies they follow should pack very little in the way of market-moving surprises. "I don't think EDGAR will have much of an impact on well-researched stocks," says Elliot Fried, executive vice president and chief investment officer with Shearson Lehman/American Express. "If something happens to IBM, for instance, everybody knows about it within six minutes."

Fried and others concede, however, that the system could have a very real impact on the less closely followed stocks. For those thousands of companies that don't show up on every research director's list, analysts admit that basic performance data they glean from such bread-and-butter filings as the 10-Ks may take days or even weeks to show up in a stock's market price. By making those filings more widely accessible and by putting them in everyone's hands at the same time, the commission hopes to take a major stride toward a fairer and more efficient market.

As laudable as the SEC's motives in creating this new system may be, not everyone will be cheering when it actually becomes operational. The fact of the matter is that many of those elements in the current system that the commission views as regrettable inefficiencies have long been regarded by many on Wall Street as apple-pie opportunities for profit. Take away those inefficiencies, and you will

(continued on page 100)

"Many people are still asking, 'Edgar — isn't that Charlie McCarthy's daddy?' "

take away some people's profits and maybe even their livelihoods.

This would certainly apply to the Wall Streeters who prowl the first-floor documents room at the SEC offices in Washington, awaiting that fresh filing that could spell a good trading opportunity or door-opener for brokers back in New York. "If someone files a 13-D on XYZ Corp. and if we can get that information out to our clients before it's widely known — well, that's a good scoop, and it makes our clients appreciate us all the more," confesses Kenneth Edlow, a partner in the arbitrage department at Bear, Stearns & Co. "But if everybody gets the information at the same time, that would tend to eliminate those occasional lucrative opportunities."

Although virtually instantaneous dissemination of SEC filings will not spell death for the arbitrageurs or anyone else who would trade on those "scoops" concerning takeovers and the like, it will surely serve to contract their stock of "lucrative opportunities." Thousands of analysts and money managers, for example, will be able to access instantly the same valuable information that is now available primarily to arbs willing to invest the time and trouble to get it first. The probable result: a drastic shortening of the time for making a quick killing in takeover candidates.

Just how big a swipe EDGAR takes at the arbitrage end of the business depends largely on how widely and how efficiently the system itself is used. But on the former point, at any rate, there seems to be little doubt. "If the capability is there to get information instantly, I think everybody will use it, if only to ensure that they are not left behind," says Richard Charnas, vice president in charge of computer resources in the corporate finance division at E.F. Hutton & Co.

At this point, the costs of technological tardiness are generally conceded to be just too high to let that happen. "Those that are the best in the current system [without EDGAR] may not be the best prepared and most efficient users of this new system," predicts Van Kasper & Co.'s Van Kasper. "I think that whoever gives their analysts PCs and access to EDGAR first will perhaps be more competitive than the firm down the street that decides simply to keep its people on the mailing lists [for hard copies of corporate filings]." Not only would EDGAR provide more timely information, but that timing advantage would be further enhanced by the fact that data on a screen can be analyzed and manipulated far faster than it can be on paper.

Controlling analysts

Linking the computer on an analyst's desk to an external data base is, of course, a relatively simple and straightforward exercise. The ramifications of that linkage may not be. At the vast majority of firms, after all, analysts reign supreme over the industry group they follow. They maintain not only many corporate and client contacts but the current and historical data that underpin a goodly portion of their analysis. When the analyst jumps ship, he leaves little behind but a gap in the firm's coverage. If, however, that analyst's work were tied into EDGAR — and especially if it were also hooked into his firm's hardware and he used its software to manipulate data on the companies he follows — though the analyst might leave, at least his statistical work would remain behind.

"I assume that as we all get better educated as to what the system can do, we certainly will want to have more control over the information that is generated while someone is an analyst at our firm," says James Massey, head of institutional sales at Salomon Brothers. "We would certainly have an interest in keeping that data internal in some sort of centralized data bank." This retained data, whether in the form of complex corporate models or just plain statistical histories, could help the next analyst on the case get up to speed faster and help the firm provide its clients with seamless coverage.

The information revolution triggered by EDGAR could also alter the ties between institutions and another group: the brokerage house salesmen, whose stock-in-trade, after all, is being the first to relay a prime tidbit to institutional clients. They could well end up losing that valuable edge. Salomon Brothers and a number of other houses are already examining the systems options that could link not only their far-flung offices but also their clients with both Edgar and their own data bases. But where does the salesman fit into this electronic network? "There is no question that the relationship between the salesman and the client will change as Wall Street firms make information from their own data bases available to their clients and as those clients hook up to be interactive with us," says Massey.

Personal key

More than ever, then, institutional salesmen will have to find new ways to service their clients. As Massey puts it, personal contact will remain "absolutely key," if for no other reason than that "there is a feeling that you lose control over getting paid when there is no middleman involved." Thus, for the institutional salesmen and their firms, a vendor-client relationship that largely exists in electronic form represents a double challenge: a requisite for holding on to the business and a threat that if you don't do it right, you will simply end up providing more service and generating less revenue.

On the retail side of the business, EDGAR could prove to be less than a boon to brokers — whose clients will be able to receive and manipulate on their own personal computers the information they now pay their brokers to provide. The discount brokers, however, face no such worries. Most of them have long had their customers on a no-frills, pay-for-what-you-use system. Thus the opportunity to hook their clients into a data base can become just another revenue-generating service to vend. "I think anyone who is serving money managers, whether they be managing their own money or someone else's, has got to provide this kind of service," says Richard Arnold, executive vice president for service delivery at Charles Schwab & Co.

For everyone on Wall Street, EDGAR might well provide a windfall that would more than make up for the loss of certain competitive advantages. Arnold sees a distinct relationship between information and trading volume. "I think it is true, categorically, that the more information that is available, the higher the transaction frequency," he says. But like much that is connected to the EDGAR system, that remains to be seen. ■

APPENDIX B

MEMORANDUM

March 12, 1985

TO: Chairman Shad

FROM: Office of the General Counsel DGoelzer

Executive Summary

The structure of EDGAR, as we understand it, is legally sound.

For legal analysis purposes, it is helpful to conceptualize the EDGAR system, when operational, as having two overlapping subsets in terms of users' access to information in its databases: (1) a public reference room where users can obtain information filed by registrants at modest charges which are regulated by the Commission, and (2) retailers of the information who sell the data to remote users in a variety of formats, whose charges are not regulated by the Commission. Because the Commission will continue to provide accessibility to EDGAR information at a reasonable cost through its public reference rooms, the Commission will fulfill its dissemination mandate. This result follows regardless of whether the Commission regulates charges to the public by retailers of that information. Further, the EDGAR contract will contain appropriate consideration to support a legal contract, in that the Commission and the contractor each will receive valuable benefits. The Commission will therefore not unlawfully augment its appropriation, even if the EDGAR system is provided to the Commission at little or no cost.

I. Description of the EDGAR Operational Contract

The final configuration of the EDGAR system is still evolving. As we understand it, the Commission will issue a request for proposals for a contractor to bid what is expected to be a cost of approximately $10 million a year for a period of seven years, to operate a system for the receipt, processing, and dissemination of filings in a paperless (electronic) form ("EDGAR"). Included in this figure will be a separate subsystem, which we will call the "SEC system", in which SEC staff will process and analyze filings in electronic form, and perform other work directly or indirectly connected with the filings, using the hardware and software of the EDGAR system. The SEC system will be secure, and, although it will be able to access EDGAR's entire database, no one from outside the Commission will be able to access the material in the SEC subsystem.

The prime contractor is expected to enter into agreements to sell its database to other entities, who will use the data in the system or retail it to others. Retail of the information may involve manipulation or analysis of the data, to "add value" to it. It is expected that these second tier users will pay a sum to the principal contractor which will enable it to recover its cost, together with a profit. The profit will be negotiated with the Commission, but, under government regulation, may not exceed 15 percent of the prime contractor's cost. Thus, the Commission will regulate the profits of its prime contractor; it will not regulate the profits of the second tier retailers nor their charges to users. As long as the operational contractor is required to sell the database at a fair price to all who wish to purchase it, and purchasers have an unrestrained right to resell the information, we see no antitrust problem.

Comments received on the Commission's release 1/ requesting comments on EDGAR financing issues have raised a question as to the propriety of the prime contractor also being permitted to be a retailer or value added supplier, on the ground that the prime contractor would obtain an unfair advantage over other users. That criticism is being considered, but, as we understand it, no final decision has yet been made as to whether to restrict the prime contractor to the role of wholesaler or permit it also to participate as a user and retailer.

The prime contractor will provide the hardware and software necessary to operate EDGAR. The extent to which the contractor will also provide hardware and software for the related SEC processing system is being studied. 2/ The SEC will hold title to the database and software.

Still being considered are methods of insuring satisfactory performance during the life of the contract, such as penalty provisions for inadequate performance.

1/ "Electronic Filing, Processing and Information Dissemination System," Solicitation of Comments, 49 FR 35798, September 12, 1984.

2/ The Federal Information Resources Management Regulation (FIRMR) is not applicable to the EDGAR procurement. Under Section 1.103(b)(3) of the FIRMR, which promulgates regulations pursuant to the Brooks Act, Pub. L. 89-306 (October 30, 1965), agencies do not have to apply the policies and procedures in the FIRMR applicable to ADP procurements if the subject matter of the contract is for something other than contracting for ADP resources. This is true even if commercially available ADP resources are used in contract performance. The subject matter of both the EDGAR pilot and operational contracts is a filing and dissemination system primarily involving contractor services. The ADP equipment merely provides the means to supply the services. Therefore, the FIRMR is inapplicable to the EDGAR contracts.

II. Legal Issues.

A. Dissemination of Information is Fulfilled by the Public Reference Rooms

An important consideration is that, regardless of EDGAR's final configuration when it becomes fully operational, the investor will still be able to get information directly from the Commission. An individual can now come to one of the Commission's public reference rooms 3/ and, at a modest cost related to the cost of reproduction, obtain a copy of whatever filing he or she wishes in either paper or microfile forms. 4/ EDGAR will in fact enhance this accessibility of information, both by adding a floppy disk form, and by enlarging the number of public reference facilities at which this can occur to all of the regional offices. 5/ Perhaps, investors may be able to obtain such information at other locations, such as a local public library, depending on the eventual subscription network.

The legal significance of this is that regardless of the access charges made by retailers under the EDGAR system, investors will be able to obtain filed information at little or no cost through the Commission's public reference room network. This continued accessibility of information ensures that the Commission will fulfill its dissemination mandate.

The vesting by the government in a contractor of control over the dissemination of information is a long-accepted practice, as evidenced, for example, by contracts for stenographic reporting which are structured to grant to contractors the exclusive right to sell their products directly to the public. See, e.g., 7 Comp. Gen. 810 (1928). In these situations (in contrast to EDGAR), persons may purchase transcripts of testimony taken by the agency only from the agency's contractor. It therefore becomes vital that the agency control the cost of such transcripts because the purchaser has no alternative source. In Matter of: Retention of Fees Received by EPA Contractors Providing Information Services to the Public, Comp. Gen. Dec. B-166506, October 20, 1975, the Comptroller General approved the use of an outside contractor to conduct EPA's dissemination function as it applied to information which, by statute, must be made available to the public. However, the Comptroller General stipulated that the proposed procedure

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3/ Located at headquarters in Washington, D.C., the New York Regional Office, and the Chicago Regional Office.

4/ In addition, individuals may inspect a filing at one of the Commission's public reference rooms via microfilm reader at no cost.

5/ Plans currently call for a terminal in each regional office connected to a high speed printer.

(allowing requesters to deal directly with the private contractor) could not be used to delay or deny access to information under the Freedom of Information Act, nor could the fees charged violate FOIA.

In view of the Commission's continued commitment to providing, at a regulated price, access to its filing information through the public reference rooms, the Commission as a legal matter does not also have to control what EDGAR's second tier retailers charge the public. So long as the user can obtain that information directly from the government, it is not unlawful for the free market to set prices for the user alternatively to receive the information in a variety of formats from retailers.

B. There is No Unlawful Augmentation of Funds

Several commentators raised questions about the propriety of the Commission's intention that EDGAR fund the Commission's internal system. The implication of the comments is that by generating sufficient revenue from EDGAR to pay for the Commission's own required activities, the Commission would be bypassing the Congressional oversight function, and would be illegally augmenting its appropriation. A related subject is the legality of contracts at no cost or reduced cost to the government.

1. Augmentation

The major problem which may arise with no-cost contracts is the possible unlawful augmentation of an agency's appropriation. Section 1341 of 31 U.S.C. 6/ prohibits an agency, unless otherwise authorized by law, from expending or obligating funds in excess of its appropriation. Section 1342 of 31 U.S.C. prohibits an officer or employee of the United States from accepting voluntary services. 7/ These statutes are intended to prevent agencies from incurring obligations or accepting services and then hoping that Congress will recognize a moral obligation to pay for the benefits received. In addition, although the United States may lawfully receive and accept gifts, individual agencies, in the absence of specific statutory authority, may not accept for their own use gifts of money or other property. 8/ The term "gifts" has been defined as "gratuitous conveyances

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6/ This section (formerly 31 U.S.C. 665(a)), together with the prohibition against voluntary services, 31 U.S.C. 1342 (formerly 31 U.S.C. 665(b)), comprise the so-called Antideficiency Act.

7/ Principles of Federal Appropriation Law, United States General Accounting Office, 5-7, 5-27, 5-28, First Ed., June 1982. "Gratuitous" services, as opposed to "voluntary" services, are permissible.

8/ Principles of Federal Appropriation Law, 5-82, supra. The Commission has gift accepting authority limited to travel expenses for employees participating in conferences and meetings. Pub. L. 98-38, June 6, 1983; 17 CFR 200.735-4.

or transfers of ownership in property without any consideration." 25 Comp. Gen. 637 (1946).

Finally, all funds received for the use of the United States must be deposited in the general fund of the Treasury as miscellaneous receipts or be considered an illegal augmentation of an agency's appropriation. 31 U.S.C. 3302. 9/ However, where funds remain in the physical control of an outside party, there is no unlawful augmentation. *International Natural Rubber Organization*, 62 Comp. Gen. 70 (1982). In fact, fees collected by contractors filling requests for information are not "moneys received * * * for the use of the United States" and may be retained by the contractor. *Matter of: Federal Election Commission*, 61 Comp. Gen. 285 (1982).

Under the proposed EDGAR configuration, monies received from the sale of copies of Commission filings and from access to EDGAR would flow directly to the contractor. Therefore, these funds need not be forwarded to the Treasury, and would not serve to illegally augment the Commission's appropriation. Further, as discussed below, sufficient legal consideration will exist in the EDGAR contract to allow the receipt of goods and services at little or no cost to the Commission, again without illegally augmenting the Commission's appropriation.

2. Legal Consideration to Support the Contract

The major factor which determines whether a no-cost or other contract is lawful is the principle of legal consideration, i.e., the concept of mutuality of promises. Consideration must be sufficient to form a binding contract. Consideration need not necessarily be monetary. The acceptance by the government of goods or services furnished at no cost pursuant to a formal contract is not statutorily prohibited if proper consideration to support the contract has been provided. As noted, the prohibition against acceptance of voluntary services in 31 U.S.C. 1342 applies to services rendered in the hope that the government might recognise a moral obligation and therefore pay for benefits conferred. The Act has no application when there are sufficient mutuality of promises in a contract to bind each party. 10/ If proper consideration has been granted, no moral claim against appropriated funds would arise, since the contractor will have received a benefit sufficient to support whatever services or goods have been contracted for between the parties.

In the EDGAR contract, the proposed grant to the operational contractor of the right to sell access to Commission filings, as well as derivative copies thereof to the public, is a valuable intangible property right

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9/ Formerly 31 U.S.C. 484.

10/ 7 Comp. Gen. 810, 811, *supra*.

having important commercial financial significance. The EDGAR contract will therefore contain appropriate consideration for the rights and obligations of the parties. In view of this consideration, the receipt by the Commission of property is not a "gift," and, since funds will be retained by the contractor, the Commission will not receive "funds" which will violate the Antideficiency Act.

In our judgment, an issue the Commission must consider is how direct the linkage or relationship should be between the consideration flowing to the government and that which flows to the contractor. It is our view that in the EDGAR context, the linkage to the EDGAR dissemination system must justify the receipt by the Commission of hardware and software. If the contractor is to provide hardware and software so that staff persons in the Divisions of Corporation Finance and Investment Management may review and process filings, it is very clear that the linkage is a direct one. Less direct, but still related, is hardware and software that would allow offices like the Office of the General Counsel and the Division of Enforcement to gain access to EDGAR filings in connection with litigation. Those offices presumably would use the hardware also for preparing legal documents in other cases or for other purposes. If the contract requires the contractor to provide goods wholly unrelated to the EDGAR receipt and dissemination system, some question could arise as to whether this will bypass the congressional appropriation system to a degree which is no longer permissible. Even this conclusion, however, is a philosophical or political one, rather than a strictly legal one.

3. No-Cost and Below-Cost Contracts

There have been few cases litigated involving provision of goods and services at no cost to a government agency. 11/ No-cost contracts have

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11/ In one of these cases, the Comptroller General approved a contract for stenographic reporting services at no cost to the government, in return for granting the contractor an exclusive right to sell transcripts to the public. 7 Comp. Gen. 810, *supra*. And, in 18 Comp. Gen. 967 (1939), the Comptroller General held that a bid for stenographic reporting services which not only offered to furnish copies of transcripts at no cost, but which also offered a cash bonus if awarded the contract, was the most advantageous to the government and should be accepted. In two other cases, discussed above in connection with dissemination, the Comptroller General approved procedures whereby contractors handled dissemination functions for agencies at no cost. Instead, the contractors billed the public directly for incurred charges. *Matter of: Retention of Fees Received by EPA Contractors Providing Information Services to the Public*, *supra*; *Matter of: Federal Election Commission*, *supra*.

been and are currently being used by various agencies. For example, many agencies, as well as the United States Supreme Court and United States Circuit Courts, receive free copies of transcripts of their sessions at no cost or reduced cost under their stenographic reporting contracts. Our own stenographic contractor furnishes transcripts of proceedings to the Commission at reduced prices. In a contract similar to the one the Commission has with Disclosure Partners, the Equal Employment Opportunity Commission provides Cottonwood Systems, Ltd. with copies of opinions, and Cottonwood then indexes the opinions and puts them on microfiche for sale to the public. Cottonwood provides to the EEOC, at no cost, 40 sets of microfilmed indexes and opinions along with 40 microfilm readers. 12/

Although there have been only a few no-cost contract decisions, there are numerous cases involving below-cost bids. In a below-cost contract, the contractor's price to the government is lower than its actual cost of performance, and an agency may receive specified goods or services at little or no cost. The Comptroller General has consistently denied protests of below-cost contracts, stating that below-cost bids are legal if an agency verifies that a low bid is not an error, and makes an affirmative decision on the awardee's ability to perform, i.e., its responsibility. See, e.g. Matter of Ellsworth Street Associates, Comp. Gen. Dec. B-213211 (October 24, 1983); Zimmerman Plumbing and Heating Co., Comp. Gen. Dec. B-211879 (June 24, 1983); Matter of Biospheres, Inc. - Reconsideration, Comp. Gen. Dec. B-203419.4 (March 16, 1982).

C. Cost-sharing Contracts

While we have spoken in the previous paragraphs of no-cost contracts, the EDGAR procurement can easily be viewed as a cost-sharing contract. The Commission's contribution would be the hardware and software from the pilot system, which we understand to be valued at over $9 million. Under the Federal Acquisition Regulations (FAR), cost-sharing contracts are specifically permitted. 13/ Further, the limitations on the use of cost-sharing contracts which are contained in Section 16.301-3 of the FAR do not refer to the percentage of participation of either the contractor or the government. Cost-sharing contracts are particularly suitable for procurements which offer both parties mutual benefits from the performance of the contract, such as in the area of research and development. 14/ They can

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12/ On March 16, 1983, after reviewing the contract, the Joint Committee on Printing granted the EEOC a waiver of paragraph 38 of the Government Printing and Binding Regulations to permit the initial publication by the private contractor of the EEOC's decisions.

13/ FAR §16.303.

14/ J. Cibinic, Jr., and R. Nash, Jr., "Formation of Government Contracts" (1982), p. 494.

also provide incentives to keep contractor costs down. 15/ If EDGAR is viewed appropriately as a cost-sharing contract, it will fit more comfortably into a traditional analysis, although, as we have said, it would be lawful as a no-cost contract.

Conclusion

The Office of the General Counsel believes that the structure of EDGAR as currently envisioned is legally sound. Because it bypasses the appropriations system to a considerable degree, it could dilute Congressional oversight over EDGAR. While, in our view, that is not a legal impediment, we understand that the Commission's Oversight Committees will be kept apprised of our EDGAR process.

Prepared By: Paul Gonson
Carol K. Scott
Jeanne B. Carter

15/ For example, the Federal Deposit Insurance Corporation currently has a contract for development of an automated payroll system. For each dollar the contractor either saves under the target cost or overruns that target, the fee to the contractor will be raised or lowered respectively by 20 cents. Therefore, if the contractor overruns costs, it shares its fee with the agency.

Mr. English. Thank you very much, Mr. Shad. I appreciate that. When you developed EDGAR, did you look at the information services that are now available or those that are expected to come into being in the not-too-distant future and determine whether or not those services might be adequate for your needs?

Mr. Shad. Yes, we did. We reviewed the securities information industries' abilities, and the financial printers; and Federal and private organizations were surveyed. It was concluded EDGAR was the optimum system, the fastest, most cost-effective, and most comprehensive.

We did look at each of the alternatives and concluded we needed something unique to receive and disseminate instantly.

Mr. English. How do you go about doing that? Was a study done?

Mr. Shad. Yes. We spent 2 years bringing the pilot on, and then 2 more years—we are going to be on the pilot for 2 years—for a feasibility analysis. We put out a sources sought release. The staff had meetings with over 20 respondents to this sources sought. The respondents represented all different types of equipment and systems, soft and hardware. So, as a result of those meetings, the idea was further refined.

Then the Mitre Corp., which is a not-for-profit sort of semi-governmental consulting group, was engaged to do the feasibility analysis. They happened to be doing one also for the U.S. Patent and Trademark Office on a much larger system than EDGAR.

I think the thing that is unique about this system is that it receives and disseminates. Our job is to protect investors and maintain orderly markets. One of the best protections is to provide information on a timely basis. To provide it when it is a week, a month, 90 days old puts some people at a great advantage over others.

The thing that is unique about EDGAR is that, as the information is transmitted from the issuer to our main frame, it will be instantly accessible by investors throughout the country—in fact, throughout the world—on their own personal computer screens. They can punch up and access General Motors or whoever they want to look at, and screen what is in the SEC main frame. With auxiliary equipment, they can do a lot of other things, too.

Mr. English. There are a lot of companies right now that are providing financial information. If there is a demand for more service, why haven't the private companies gone ahead and developed it?

Mr. Shad. They have developed pieces of it. There are Compustat, Micro Disclosure, and others. But they don't control the information; they are not the source of it. It does not come into them; it doesn't go out through them. There is nothing I am aware of that would be comparable to this at the present time.

Ms. Goodman. Part of the problem is the services are dependent upon our disclosure documents. Once the paper is filed with us, they then get the paper, or the microfiche and key in the data. In order to make the data available instantly—the securities markets move so fast that even a day or two can be too late—in order to make the information available instantly, we had to go to the notion of electronic filing with us. And we, as the Government agency which imposes the regulatory requirements, can do that.

We can say the information has to come in electronically. The private sector cannot. While they can keypunch the information overnight, that isn't timely enough in terms of the disclosure of information for the securities markets.

Mr. ENGLISH. So the real answer to my question, then, is that we lose a few hours' lapse time? If it wasn't for a few hours' lapse time, the private sector could do this itself, and I assume——

Mr. SHAD. I think there is a week's lapse.

Ms. GOODMAN. More than a few hours. They have to get the paper information, key it into the system, verify accuracy, and so forth.

Mr. ENGLISH. How much time on an average would you say we are talking about, Mr. Shad? How much delay before that information would be available to the public?

Mr. SHAD. The issuer no longer has to transmit it to us on paper. It can come over the telephone lines.

Mr. ENGLISH. I am talking about without this system.

Mr. SHAD. You are saying they would prepare paper, ship it to us in bulk. At that point, you are saying the private operator would then be able to keypunch it into a system and disseminate it.

I think the total time, as compared with the same information coming, without being manually reformatted at all, coming from the issuer into our main frame instantly available, you are talking about the difference of from—the time it is transmitted and available to the public, which is a matter of minutes—to certainly a matter of days and perhaps much longer.

Mr. ENGLISH. You state on page 20 of your testimony that EDGAR will enable investors to enter orders with their brokers over computer terminals. If the brokers and customers want to communicate through computer terminals, it would seem like that it would be up to them to arrange for it.

Mr. SHAD. They can. That is independent. That is auxiliary to EDGAR. That is not part of the EDGAR system.

Right now, I was trying to put it in the context of what other things are going on right now, and only one of the litany I ran through at one point there would be EDGAR. EDGAR is simply the accessibility to the current information that is with the SEC. But the ability to transmit orders, for instance, is being offered now by some brokers. Investors receive this information on the same terminals on which they would be reviewing the SEC materials. They can review the research reports and other documents provided by their brokers.

Mr. ENGLISH. As I understand it in broad terms, EDGAR does three things: receipt of the filings, processing, and then dissemination.

Mr. SHAD. It also facilitates analysis.

Mr. ENGLISH. Facilitates analysis?

Mr. SHAD. Yes.

Mr. ENGLISH. Wouldn't that be processing?

Mr. SHAD. Analysis by investors. The processing is by our staff.

Mr. ENGLISH. What are the——

Mr. SHAD. Two forms of analysis.

Mr. **English**. What are the SEC's requirements for processing, your requirements?

Mr. **Shad**. We have to screen the filings from a variety of points of view and, in some cases, comment on them, and request that they be amended. And that is done again using the EDGAR system at computer work stations with the use of electronic mail. We go through a variety of screens and decide first, whether or not the filing requires a detailed review, and then, if so, what additional information may be required of the issuer.

Mr. **English**. What kind of hardware and software is the contractor going to be required to provide?

Mr. **Fogash**. Our current plan is that the contractor would be required to provide a sufficient number of work stations and computer capacity to provide full processing for the Division of Corporation Finance. That would be in numbers, roughly, terminals, work stations——

Mr. **English**. Could we get all that for the record, specifically what it is the contractor is going to be required to provide both in software and hardware?

Mr. **Fogash**. Yes.

[The information follows:]

Question. What kind of hardware and software is the contractor going to be required to provide?

Answer. Since the SEC Request for Proposals (RFP) will not go out as a finalized document until October 1985, and even then will be a request for the potential contractor to provide certain functions and not specific pieces of equipment or software, it is only possible to respond in general terms.

At a minimum, the contractor will be required to bid sufficient hardware to permit the Division of Corporation Finance and Investment Management to fully automatic their functions. In order to accomplish this a contractor would have to bid approximately 500 workstations and sufficient additional hardware to receive, store, analyze and disseminate the workload—currently more than six million pages annually.

Software will be extensive and will fall into the following major categories: operating system; communciations; receipt processing; analytical processing; security; system performance.

Mr. **English**. What percentage of EDGAR's cost will result from the processing requirements?

Mr. **Fogash**. Of our estimated $50 million cost for EDGAR for 5 years, we estimate that roughly $22.5 million would be associated with SEC internal processing, of which we will have spent at the end of the pilot $9 million for hardware and software that would be made available to the contractor.

Mr. **English**. You are telling me nearly half of it, then?

Mr. **Fogash**. We are roughly at 40 percent of the $50 million cost.

Mr. **English**. Can you estimate what percentage of the information in EDGAR will be solely in the interest of the SEC?

Ms. **Goodman**. Almost none of the information that we require people to file with us is solely for our internal purposes, contrasted to most other Government agencies. Most of the information we get is for purposes of informing the investment community, so it is public information—annual reports filed by companies, quarterly reports, et cetera. Most of the information filed with us is publicly available.

In terms of the number of people looking at it in our public reference rooms, we don't have statistics. Our dissemination contractor who provides the service of selling copies of the information to the public indicates to us that approximately 62 percent of the documents they microfiche for us, which are most of our documents, are requested on a paid basis by members of the public.

Mr. **English**. Some of the SEC's filings, I believe, are resold by private companies. What percentage of the current filings has developed a resale market?

Ms. **Goodman**. That is the 62-percent figure?

Mr. **Fogash**. I would like to clarify. That is from our dissemination contractor. There are a number of service bureaus that work in our public reference room that also sell documents. We have no detailed information of what documents they sell. There are specific groups who also do the ownership reporting forms, forms 3's and 4's, that are separate.

Mr. **Shad**. In response to your earlier question, private vendors could be, of course, doing tasks EDGAR does if they could handle it fast enough; but they won't be able to handle the information fast enough, or as fast as the EDGAR system. They are taking the paper now and reformatting or keying it, putting it on microfiche and disseminating it to their subscribers and customers.

Mr. **English**. Mr. DioGuardi.

Mr. **DioGuardi**. Thank you, Mr. Chairman.

I didn't hear all the testimony, but, Mr. Chairman, let me make a couple of comments.

One, as a certified public accountant, I am very much concerned with the ability of our Government agencies to gather and disseminate information. As a matter of fact, having been in Congress now for 3 months—by the way, I understand I am only the third CPA ever elected to Congress, if that tells you something—having been here 3 months, it seems that Congress itself needs a better data base upon which to make meaningful decisions. As a certified public accountant and a Congressman, I will be looking carefully at all methods of data gathering, retrieval, dissemination.

I am here to be educated a little bit more about this particular system. I will have some questions perhaps at other meetings.

Thank you, Mr. Chairman.

Mr. **English**. Mr. Kleczka.

Mr. **Kleczka**. One question, Mr. Chairman.

Again, I didn't hear the testimony, arriving from the floor late. However, of interest to me is whether or not this new system will increase or decrease the availability of financial information to the public?

Mr. **Shad**. It will accelerate the availability of financial information to the public. The same information as presently required on paper will be available instantly as it is filed with the SEC. The investing public, securities analysts, others throughout the country and abroad will have instant access to it on their home and office computer screens.

Ms. **Goodman**. In addition to being available faster, it will also be available in machine readable form so it will provide the capability to do more indepth computer analysis without waiting to have the data keypunched.

Mr. **Shad**. It will avoid errors in the manual transformation of material from one form to another.

Mr. **Kleczka**. If I need this information and don't have a computer networking system, how do I access it?

Mr. **Shad**. The same way as all others that presently have access to the paper form.

Mr. **Kleczka**. Would that be available at cost?

Mr. **Shad**. Most companies make it available to their shareholders at no cost.

Ms. **Goodman**. We make it available.

Mr. **Kleczka**. Directly through the SEC, it is made available at cost or free?

Ms. **Goodman**. There is a modest charge for reproduction.

Mr. **Shad**. So much a page.

Ms. **Goodman**. EDGAR will increase the availability of information. All the current avenues available today of getting copies of SEC documents will continue to be available; and, in addition, the filings will be available on home and business computer screens.

Mr. **Kleczka**. At any point in time will SEC ever own the data base? Will it be ours? Will we be a captive audience to the vendor?

Mr. **Fogash**. It will always be the SEC's data base. There will be no restrictions on the secondary use of that data base. We currently have three public reference rooms—in Washington, Chicago, and New York. Under EDGAR, we plan at every location the SEC has—which are roughly 15 across the country—we would have terminals available using EDGAR at those sites. So it would dramatically improve the service to the outlying areas that do not have a public reference room available and have to depend upon mail service.

Mr. **Shad**. Even at those locations with reference rooms, it is currently 2 to 3 weeks after the submission of a filing before a microfiche copy is available. Under EDGAR, it will be accessible and instantly by computer. Moreover, there are 16 million home computers out there now. The industry estimates are that will more than double in less than 5 years. There are 42 million investors. So a high percentage of the investing public would have the equipment. Certainly by the end of the decade, there will be a lot of the modems for the telephone connections to a home computer to be able to dial into the SEC's main frame from home and access this information.

Mr. **Kleczka**. Thank you.

Thank you, Mr. Chairman.

Mr. **English**. Thank you, Mr. Kleczka.

Mr. Shad, I understand the contractor is going to have to invest some $50 million in EDGAR. In anybody's book, that is an awful lot of money.

Viewing the contract from the perspective of a potential bidder, do you consider EDGAR to be a risky venture?

Mr. **Shad**. Well, we have had a broad-based analysis done of the market. It has been a $2 billion market for financial informational services. A tiny fraction of that would support the capital investment that we estimate would be required.

The idea would be that we would regulate the rates at which the bulk data was made available to other wholesalers, if you will, or others that would use it for dissemination and combine it with their various software programs to permit all kinds of comparative analyses and other uses. Historical data would be provided on a single company or a number of companies.

I think the market is there. The speed and utility of the system is such that we believe it is possible to be very attractive to private contractors.

Mr. ENGLISH. Are you talking about the study, the Mathematica study?

Mr. SHAD. Yes.

Mr. ENGLISH. That is the one that supposedly shows potential demand, as I understand it?

Mr. SHAD. The overall market, as I mentioned, is a $2 billion market. Their arithmetic is simply assuming 60,000 subscribers at $25 a month.

Mr. ENGLISH. Didn't they say there were potentially as many subscribers to this service as there would be to the Wall Street Journal? Isn't that part of the statement that was made with regard to the potential market?

Mr. SHAD. I don't recall that specific statement. I wouldn't argue with it. I don't think that is being too futuristic to anticipate the prospect of much of the information that corporate executives and investors receive coming over a desk-top screen.

Mr. ENGLISH. Also, this has been a very controversial report. It has received an awful lot of criticism and an awful lot of people have strongly disagreed with the conclusions, as well.

Mr. SHAD. That there is a $2 billion market for this information?

Mr. ENGLISH. Excuse me?

Mr. SHAD. They argue——

Mr. ENGLISH. With the study.

Mr. SHAD. There is $2 billion of total demand for the financial service—this type of information. That is just one of a whole series of things people need to have currently, fast. But the estimate, I haven't heard argument over the number of 60,000 potential subscribers at $25 a month. That isn't a very ambitious number. It is $18 million a year out of a $2 billion market.

Mr. ENGLISH. What rate of return do you think these bidders are expecting?

Mr. SHAD. I think it depends on a lot of things—the extent to which bidders have ancillary equipment in place, whether they are already in the information dissemination business, et cetera. Dow Jones, for instance, is one of the three primary contractors on the present system. Arthur Andersen is the primary contractor; and IBM and Dow Jones are part of the team.

Dow Jones disseminates an enormous amount of information, every day, through its broad tape, and by other means. There are others—LEXIS, and a whole variety of other information systems already in place. So the question is whether this would be incremental to a contractor's existing activities, or a new system adapted specifically to this market.

It is hard, therefore, to respond to the percentage of return question.

Mr. ENGLISH. If you are going to go out and invest $50 million, you are going to bet on the nose that this is going to be a winner.

You have to have fixed in your mind what kind of rate of return you are going to get in order to make that kind of a gamble worthwhile.

I guess the question I am asking you is, what kind of rate of return do you think the bidders are going to have to have before they are willing to take that kind of risk?

Mr. SHAD. I honestly believe it could range all the way from a loss leader to a high profit potential for a bidder to take it on. In other words, if it really increases—again, if it is incremental, you don't need to have a high rate of return. It sounds like a big number, and it is—but the future potential is so enormous, I think it could range from a marginal rate of return to an attractive rate of return.

If you want me to pick a number out of the air, I think it depends on alternative commitments by companies. What are their alternatives? Where is the industry going? What is the competition doing? If they don't get on board now, where will the market be at the end of the decade? Will they be left at the starting gate? I think there are so many factors.

The financial printers have a big stake in electronic dissemination of information, because up until now they have been the sole sources of putting together. There are very large financial printers throughout the country setting up facilities to be the transmission facility for issuers—for the registrants. Really, the registrants are only the beginning of this, as far as the SEC is concerned.

We have over 10,000 publicly owned companies coming on. But also we have over 6,500 broker-dealers that file information with the SEC. That could be handled more efficiently over this EDGAR system without the same degree of need to disseminate that information. It is more for internal SEC uses.

We have a great number of investment companies out there that have to disseminate information to the public. We are really starting with a big piece of the iceberg, but by no means all of it. I think the potential is so great that the major companies in the field would have to carefully consider whether or not to compete for this opportunity.

Mr. ENGLISH. I don't question the fact we have an awful lot of people out there disseminating information, trying to disseminate information. The thing that troubles me a little bit, though, is that it would seem to me that if we are going to go in and take a look at a system that is this mammoth, this revolutionary, this new and different—certainly this one is new and different—excuse me, that's my beeper.

Mr. SHAD. If you had an EDGAR, you would be getting a stock quote on it.

Mr. ENGLISH. Given that fact, I would think you would have a pretty good idea. You talk to a lot of folks out there that are interested in getting into this. Anybody that is interested, I imagine you have talked to them by now. You have a good idea of what they have in mind for it. You have a good idea what kind of rate of return they would have to have in order to make this thing fly.

Mr. SHAD. We don't have the latter. I can't say we know what their expectation is.

Let me add another effort we are about to engage in, to be able to be more responsive to your question. That is, we plan, in June, the month after this, to put out a presolicitation document which will be the substantial equivalent of the request for proposal document. In other words, it will be in much greater detail than anything we put out up to now.

We are asking potential bidders to comment. We may have to modify our approach. We are going to try to test, in effect, what the market is and who is interested in it and on what basis. So we will have more information at that point to try to adapt the proposal, the final proposal that will be put out in the fall, to the real world.

Mr. **English**. You think it is reasonable to estimate that the contractor is going to have to have revenues in the neighborhood of $15, $20 million a year in order to get a fair return on his investment?

Mr. **Shad**. Yes. I think that is a very realistic—in fact, probably I think the potential revenues are greater than that. I think that is a reasonable minimum expectation.

Mr. **English**. Why would a company want to be a contractor for EDGAR if it can buy all of EDGAR's information without making any capital investment?

Mr. **Shad**. Because the prime contractor will be permitted to sell the bulk data to other contractors or other users at a profit, at enough to recover a reasonable return on its investment. It will also be in a very good position to compete with the other users, the whole marketplace, on a value-added basis. I would expect that the prime contractor would also develop software systems and other facilities in competition with all of them out there to provide similar services with the expectation of profit.

Mr. **English**. I guess the thing I keep wondering about, though, is everybody going to have access to this information?

Mr. **Shad**. Yes.

Mr. **English**. You, as the prime contractor, are going to have it; your competitors will have it.

Now, why would I want to go out and risk or invest $50 million when I am going to be able to get the same information if I sit back and wait? Just let the contractor build it, and I will buy it from them.

Mr. **Shad**. You will pay more than their cost.

Mr. **English**. $50 million worth?

Mr. **Shad**. If I were a potential competitor for this service, or the prime contractor for it, I would take into account the return on the investment and the business opportunity. I think the opportunity costs, if you will, if you are not the prime contractor, are significant.

Ms. **Goodman**. Also, the prime contractor, even though he makes the data available to other users and sellers of the data, will be much more familiar with the internal structure of the data base. So, while other competitors will have access to the data base, they will probably have to develop additional software to make use of the data base in such a way to sell it to investors while the prime contractor will be more familiar with the structure of the data base.

Mr. English. That still sounds to me like it would be a lot easier route to travel, though. You are going to have all the headaches, the big investment up front. And the other side of that is, well, you may not be quite as familiar initially with the data base but it isn't going to take you long to figure that data base out.

By the same token, you may need additional software, but it is nothing like the type of development you have to have if you are the prime contractor.

I guess it sounds like the SEC has something of a dilemma in this matter. On the one hand, if the contractor is given too much of an advantage, it is going to be unfair to the competitors in the information business; and, in fact, there could be a de facto monopoly over SEC data. But, on the other hand, if the contractor is not given enough of an advantage, you won't have anybody seeking the contract. You are between a rock and a hard spot on that.

Mr. Shad. I don't think that is a dilemma. That is a common business problem, if you will, that you have to be responsive to. I don't think it is unusual. I think it is a common situation where companies all the time are weighing building a new plant, putting $50 million into it, and what the potential market will be; what the competitive situation will be.

Mr. English. I am not talking about their dilemma. I am talking about your dilemma at the SEC.

Mr. Shad. I wouldn't characterize it as a dilemma. We have had 17 years' experience with a very similar contract approach with Disclosure, Inc. We have been doing this sort of thing with microfiche for 17 years, with a sole contractor, on a no-cost basis. So it is not as if we are trying to invent the wheel as far as dealing with this sort of a contract.

Mr. English. One last question; then we have to break for a vote. I hope we won't have too many of these. We may have several through the afternoon. You have to bear with us, if you would. Then I will let my colleagues ask any questions that may occur to them.

Information industry companies tell us it can take a long time—in fact, it can take many years—to develop a market for information services. You can't always guess what the public may want as far as those markets are concerned. How can you be sure there will be a market for the services that EDGAR provides? Is there any certainty in this at all?

Mr. Shad. I believe there is. Right now, Standard & Poor's, Moody's, the Wall Street Journal, Value Line—there are all kinds of companies in the business of taking the SEC filings and other information and putting it into various formats for analysis and dissemination to investors.

I think the best testimonial to the demand is the 100 million shares that are trading on the New York Stock Exchange in a day now. The public, institutional interest, the demand for current, reliable financial data, the faster the better, is enormous. I have no reservation that the market is there.

Mr. English. We will recess for the vote.

[Recess taken.]

Mr. English. Mr. Shad, what controls do you envision being imposed on the resale operations of the contractor?

Mr. Shad. The wholesale price to other bulk users would be subject to approval by the Commission, similar to the present microfiche operation.

Mr. English. Would this include prices? Would you have some type of price control on how much they can charge for that information and then how much can be—both the wholesale and retail—I suppose that would be the proper words to use?

Mr. Shad. Yes. On the wholesale side.

It would be subject to annual audits and review. Not on the sale of the value-added service, but on the bulk sales.

Mr. English. I guess then the question arises—and I think this was fairly obvious—why are the controls, in your opinion, necessary?

Mr. Shad. To prevent unconscionable profits or anticompetitive activity by the primary vendor.

Mr. English. Doesn't the need for some regulation really point out that it is essentially an awkward state that the EDGAR contractor is in? It is kind of—on the one hand, while we are trying to get this information out, we want to make it available to the public. It is information that is collected by the U.S. Government. But then, on the other hand, we are over here contracting with a private company to handle it and get it out for us.

We are kind of in there neither fish nor fowl? Do you feel that is awkward at all?

Mr. Shad. It is not unprecedented. It has been going on for a long time, both within the SEC and other Government agencies. It is not unique in the sense we are doing something that has not been done before.

Ms. Goodman. For example, in our disclosure contract, we regulate what the contractor can charge for basic service in terms of coming into our reference room and making a copy or by mail requesting a copy. But the contractor offers all kinds of value-added services, such as promising to have a tender offer document available in New York 2 hours after it is filed in Washington. That kind of service is not regulated at all. So we have both the regulated side and the unregulated value-added service available today.

Mr. English. Will all the information in EDGAR be public information?

Mr. Shad. Virtually all.

Ms. Goodman. Confidential treatment requests on certain of the information filed with us are nonpublic. But in the pilot we handle that by just making sure that information is only available internally.

Mr. English. Does the SEC have the authority to control the access to, use of, and redisclosure of any of this public information?

Mr. Shad. The Commission generally does not have authority to control the use or redisclosure of public information. With respect to controlling access, the Commission does have some authority. For example, under the Freedom of Information Act, agencies may set hours and places for viewing documents and may charge a reasonable cost for reproduction.

EDGAR will result in improved access to information. The Commission will take steps to ensure that its contractor provides access to the data base to other information disseminators. For example, we do not anticipate that the contractor would have any timing advantage over other users. Moreover, we are considering a requirement that if the contractor offers value-added services, it must pay for the use of the data base.

It also should be noted that the access provided by the contractor and other information disseminators will be in addition to access to the information in the Commission's public reference rooms throughout the country and access to the information of paper and microfiche.

Mr. **English.** Will there be any restrictions of any type for the use or resale of information obtained from EDGAR?

Mr. **Shad.** Any restrictions on the resale?

Mr. **English.** Right; on the use or resale?

Mr. **Shad.** Again, not at the retail level; but at the wholesale level, yes. There would be controls at the wholesale level on the pricing. But at the retail level or the value-added level, that would be at a competitive market rate.

Mr. **English.** What would the SEC do if it had unlimited funds to set up its own information system, or any information system?

Mr. **Shad.** I think EDGAR would be the most cost-effective approach. That is what we probably would be doing even with unlimited funds.

Mr. **English.** If you had unlimited funds, would you contract it out?

Mr. **Shad.** I think—yes. I think we would still be doing it the way we are doing it. The reason I believe that is we would still try to do the most cost-effective job we could. I don't think we could do it inhouse, if you will, on a more cost-effective basis than we are proposing to do.

Mr. **English.** Mr. Neal, any questions?

Mr. **Neal.** No, thank you, Mr. Chairman.

Mr. **English.** Mr. Shad, I hope you have a lot of luck with EDGAR. Quite frankly, it seems to me like you may need it.

Mr. **Shad.** Luck always helps.

Mr. **English.** I also think the SEC may be proceeding a little too quickly in this matter. It seems there are some unanswered questions about EDGAR. Personally, I cannot understand why anyone would be willing to invest $50 million in EDGAR. It is far from certain that a contractor would be able to recover his investment, let alone make a profit. As I stated earlier, if I were a businessman, I would much rather see my competitor go out and invest this $50 million, within the contract; then, buy the information from him, rather than do it on my own.

Nevertheless, we certainly will be watching progress that you make. It is just possible that this thing will work out after all. We all hope that it will.

In any event, the whole Government will be able to learn a lot from your experience. I just hope it doesn't cost the contractor too much. I also hope you don't return to Congress in a few years and ask for public funds to bail out a contractor who is losing his shirt on EDGAR. Certainly, I don't think that under those conditions that you would receive a warm reception.

Again, we wish you luck. I want to thank you very much for your testimony.

Mr. SHAD. May I respond briefly to a couple of items?

In terms of the speed with which we have moved, we started in February 1983, spent about a year on just feasibility, without spending any money, but just deciding, determining what we were proposing to do was feasible in terms of existing equipment, both hardware and software. Then we spent another year bringing the pilot on. So there were 2 years in there.

Now, the pilot is a 2-year operation. It has been on for 7 months now; working beautifully.

By my experience on Wall Street during the late sixties/early seventies when Wall Street darned near had to close down because of the paperwork crunch—remember, they had to suspend trading hours. They couldn't handle 20 million share days back to back.

Today, they are handled routinely because of the telecommunication facilities in place. The SEC is playing catch-up. We are in that same business of handling tons of paper manually.

What we are trying to do is dramatically improve the process. No comparable improvement has occurred in the 50 years, half a century, that these rules and laws have been on the books where companies had to make this information available.

In some sense, we are just getting into the 20th century. In fact, we want to leap-frog into the 21st century and do a job for the investing public, which is to make this information available instantly. It is terrific if we can accomplish that.

I think I have much greater confidence than just hope. I think the market is enormous. The opportunity to serve the public is so great that there will be more than adequate interest in the project. But we are trying to safety factor it by going out with this pre-solicitation document which will provide potential bidders with the information they would otherwise normally not receive until they were asked to submit a proposal. We can therefore adapt our final request for proposals to the response that we receive from the presolicitation.

Mr. ENGLISH. We certainly don't disagree as far as automation. I agree with you wholeheartedly.

I suppose the question in my mind is whether this is the right way, the only way, or the best way to proceed. Your objective I think we all wholeheartedly endorse. As I said, again, I certainly hope that you are correct and hope it works out well. We will be keeping an eye on it.

Mr. SHAD. Thank you very much.

Mr. ENGLISH. Mr. Lightfoot, do you have any questions?

Mr. LIGHTFOOT. No, Mr. Chairman. Thank you.

Mr. ENGLISH. Thank you very much, Mr. Shad.

Next we will have a panel and try to get their testimony in before we have another vote: Mr. Peter Marx, general counsel for the Information Industry Association, and he is going to be accompanied by David Peyton; and, Benjamin Cooper, senior vice president for government affairs, Financial Printers of America. I want to welcome each of you here.

Mr. Marx, I guess we will let you begin with your testimony. If any of you would like to summarize your testimony, without objection the full and complete written testimony will be made part of the record.

STATEMENT OF PETER MARX, GENERAL COUNSEL, INFORMATION INDUSTRY ASSOCIATION, ACCOMPANIED BY DAVID PEYTON, DIRECTOR, GOVERNMENT RELATIONS

Mr. **Marx**. Thank you, Mr. Chairman.

I would like to summarize the statements in our formal submission.

I am Peter Marx, a partner in the Boston law firm of Goulston and Storrs. I am speaking today on behalf of the Information Industry Association, which I serve as general counsel and a director. Joining me this afternoon is David Peyton, director, government relations of the IIA.

The Information Industry Association is a trade association, founded in 1968, serving companies involved with the generation, distribution and use of information. The IIA represents nearly 400 information publishers and information service organizations.

We welcome this afternoon's hearing to consider the larger policy issues raised by the electronic filing activities of Government agencies.

Being the first major Federal electronic filing program, the EDGAR project carries enormous significance. Many aspects of the project are precedential. Without question, numerous Federal, State, and local agencies will be watching the Securities and Exchange Commission's actions and will be pursuing electronic filing themselves in the next several years. We commend the SEC for its forward-looking initiative.

Mr. Chairman, our overall theme is that only multiple, diverse, and specific information services can meet the information needs of different users, including Federal agencies. The only way for such a diversity to arise is for users to express their demands in market terms through willingness to pay, with entrepreneurs identifying and serving expressed needs and wants.

Our vision for the future is that Federal agencies will add their demand to existing outside private demand for information of various kinds in a wide array of formats. By so doing, Federal agencies will become a powerful propulsive force driving even greater development in highly refined information services. More specifically, we wish to present eight basic points which represent the consensus of our members on electronic filing. Let me summarize before going into each issue in more detail.

First, as each agency commences its planning and preparation, it should determine its own functional requirements or demand. It should then make the same inquiry for outside users in the interested public and compare the results.

Second, Government agencies should place primary reliance on the private sector for fulfillment of their own requirements or demand as well as outside requirements or demand.

Third, in procuring services from the private sector, agencies should consider separate contracts for basic and value-added functions.

Fourth, in line with the multiple functions of electronic filing systems, agencies should expect to fund their operations from a mix of filing fees, appropriations, and user charges. Any reliance on barter should be limited in scope.

Fifth, congressional oversight should focus on the maintenance of open, nonrestrictive information policies, with any exceptions clearly authorized should they prove necessary.

Sixth, agencies should be careful not to create the appearance or possibility of conflict of interest with the primary vendor or vendors.

Seventh, agencies should certify electronically filed data base records as official.

Eighth, to provide needed outside perspective, agencies should seek the advice of the interested and expert outside groups which will be providing and using the relevant systems and information.

Now let me take each point in turn.

One, needs and market assessment: An agency's own internal needs may or may not resemble private market demand for the data in question. Agencies should not assume that a congruence will exist. The Government staff user may well have different requirements for timeliness, format, and content from outside users.

Accordingly, the technology best suited for internal Government use may not also be the best for the different requirements of outside users, and hence, the service designed for internal agency use may be less marketable than any of a variety of other services.

To assess the respective private markets for machine-readable data, agencies will have to turn to survey research. Already, the SEC and the Federal Maritime Commission have done so. However, we have a concern about the use of the front-end studies, whether concept testing or genuine market research, as grounds for agency decisionmaking.

For example, the study done for the SEC by Mathematica, Inc., took place before there was a clear definition of what the EDGAR system would look like in operation. Without a clear picture of what was involved, and without any financial commitment, respondents would naturally tend to respond positively to very general questions.

Furthermore, a concept test or trial should not be confused with more detailed market research. Favorable respondents in such a survey should not be considered customers that an agency's vendor can ultimately count on. We are not saying that agencies should avoid exploratory questionnaires of this type. We are saying that their results should be interpreted prudently and not be confused with testing acceptance of a well-defined or nearly completed service.

Two, procurement from the private sector: To meet society's needs for information, we believe that policy should place primary reliance on the private sector and an open and competitive information marketplace rather than on the public sector for providing information products and services. Indeed, the health and viability of the financial information sector can be attributed in part to the lack of any significant Government competition.

For example, there are over 50 information companies selling stock price information and related services. They produce a variety of information content in a wide array of formats. Only this kind of diversity can meet the needs of all users, whether institutional or individual.

Let us note that there are two distinct levels or stages at which procurement policy should come into play. The more obvious level is the A-76 level; that is, the resolution of a "make or buy" choice for some new Government requirement or program.

Prior to that, however, an agency ought to have conducted a systematic canvass of existing private sector capabilities—service by service, function by function—to see whether the agency needed to conduct any procurement action more complicated than a simple cash purchase of existing services.

This latter point is sometimes missed. It relates crucially to an agency's assessment of the demands for information services in its area of jurisdiction, whether from outside users or from its own staff.

Three, agencies should preserve fair competitive conditions. When an agency lets a contract for a complex, mixed-use system, the primary systems vendor may have several functions to perform, including facilities management, internal staff support, and selling raw or bulk data at wholesale to other vendors.

In addition, the incumbent vendor may wish to enter the value-added services field. If it did, it might enjoy a competitive advantage relative to other value-added vendors of enhanced services. How agencies can contract with their incumbent vendors to enter this field while not lending an artificial competitive advantage to them over outside value-added vendors is a serious matter for agencies to resolve.

The key is that an agency need not regard its electronic filing project as an indivisible whole. An agency could well divide the project into at least two subsystems to be separately handled and separately procured. The contract for the subsystem devoted to internal processes would essentially be a data processing facilities management contract.

On the other hand, the contract for the "external" subsystem would involve receipt, storage and dissemination. The contractor for the external system may, if it wishes, sell enhanced products at whatever price it determines appropriate. The internal system contractor would be explicitly prohibited from selling any information it developed in the course of performing its duties under its contract.

The external contractor should be required to sell to all who wish to purchase information, either in bulk or individual subsets. There should be no discrimination of any sort based on the identity of the user or buyer.

Mr. ENGLISH. We are going to have to vote. Excuse me.

[Recess taken.]

Mr. ENGLISH. Mr. Marx, please proceed.

Mr. MARX. Thank you, Mr. Chairman.

I will skip some of the other sections.

The next section is paying for electronic filing systems. Few policies set by Congress can be more fundamental than that in title 31, that the Government lives and runs by appropriated funds. We see no reason for Congress to depart from its basic appropriations and oversight functions with respect to electronic filing.

We recognize the appeal which off-budget agreements will have in years of enormous Federal deficits and agency budget cutbacks.

Upon inspection, however, an assertion is being made that the Government can conduct its business better by barter than by cash. We find this acceptable only under limited circumstances.

Appropriated funds should be relied on in two distinct circumstances. First, agencies should clearly bear the cost of the internal part of an electronic filing system dedicated to staff support. Furthermore, agencies should also bear their share of the costs of operating any mixed-use retrieval system that serves both Government staff and public users.

Filers and public users should also contribute their share to the financing of the system from which they directly benefit.

The matter of public user charges or fees has generated some discussion. Some agencies have traditionally maintained public reference rooms operated entirely out of appropriated funds and without any user fees, even from full-time professional practitioners relying on the agency's livelihood. However, these user groups, such as trademark practitioners, have no special call on the Treasury to provide them with essentially unlimited tax-supported information services.

Moreover, by giving away on-line access, the Government could establish a damaging price perception that the information were neither costly nor valuable. We do recognize, however, that in some instances it may be in the public interest for the agency itself to assure access by those who might have difficulty in paying.

Five, special statutory authority for resale: Agencies' budgetary constraints are pushing them toward finding ways to make the position of systems vendor a more valuable consideration, so as to increase bidders' willingness to provide the required services to agencies for lesser dollar outlays. One proposal is to restrict or prohibit resale of "raw" or "bulk" data in machine-readable form at the wholesale level.

For in the absence of any restrictions, resellers will quickly push the price down very close to marginal reproduction cost. This raises copyright and Freedom of Information Act questions and will probably require special legislation.

Finally, Mr. Chairman, we see one additional element as essential to a successful electronic filing effort. For an agency to be sure that it adequately comprehends the choices, values, and interests touched by electronic filing, it should consult with the full array of outside groups greatly affected by a transition to electronic filing.

If an agency were to take initiative itself, we expect it would have to comply with the procedural formalities of the Advisory Committee Act. That course would certainly satisfy our concern, although we do not say that the necessary consultation must take this form.

Mr. Chairman, this concludes our survey of the basic issues regarding electronic filing as we see them. We are now ready to answer any questions you may have.

[The prepared statement of Mr. Marx follows:]

ELECTRONIC FILING

Testimony
of the
INFORMATION INDUSTRY ASSOCIATION

Before the
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT OPERATIONS
SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE AND AGRICULTURE

April 29, 1985

Good afternoon, Mr. Chairman. I am Peter Marx, a partner in the Boston law firm of Goulston and Storrs, and General Counsel and a Director of the Information Industry Association (IIA). Joining me this afternoon is David Peyton, Director, Government Relations of the IIA.

The Information Industry Association is the trade association, founded in 1968, serving those interested in business opportunities associated with the generation, distribution, and use of information. Information companies engage in an enormous array of activities, best described by a map which we have attached to the statement. The IIA represents nearly 400 information publishers and information service organizations. Firms that provide computerized databases — whether full-text, citations, abstracts, or numeric data — for customers to call up the information they seek are a core constituency of the Association.

A number of IIA member companies meet market needs for government information by repackaging or otherwise enhancing raw government information. The result is a diversity and specificity of information sources to meet the needs of many different users which could only arise through marketplace give-and-take between suppliers and users. This so-called value-added function has been especially useful in meeting the needs of the financial and securities industry. The IIA has a division dedicated to such services, including companies such as Dun & Bradstreet, Standard & Poor's, Dow Jones, Quotron, and Telerate. At last count in 1983, U.S. business information companies, very narrowly defined, had revenues of $13 billion, growing at 20% per year. At that growth rate, the information industry would overtake newspapers as the largest media segment by 1990.

We regard electronic filing as one of the most significant subjects for information policy to have emerged in the past year. Indeed, Mr. Chairman, we have widely disseminated in our association the list of 31 questions which you inserted in the *Congressional Record* on March 14th of last year. That list remains the single best indication of the scope of policy issues which electronic filing raises. By electronic filing, we mean the submission or reporting of information to Government agencies in electronic or machine-readable form. At the same time, we recognize that electronic filing projects, in all likelihood, will grow into mixed-use systems with staff support and public access or dissemination functions as well. Unquestionably, electronic filing will bring considerable benefits to both the federal government and the private sector.

We welcome this afternoon's hearing as a timely occasion to consider the larger policy issues raised by the electronic filing activities of government agencies. We would not downplay the need for technical competence and sound administration. At the same time, it often seems that those operating concerns can tend to obscure longer-term issues just as critically in need of resolution. The Securities and Exchange Commission's (SEC's) automation efforts offer a useful starting point for discussion of the broad issues before us this afternoon. Given the enormous volume of information on paper which the SEC must process, no one can argue with seeking the potential benefits of electronic filing.

Being the first major federal electronic filing program, the EDGAR (Electronic Data Gathering, Analysis and Retrieval) project carries enormous significance. EDGAR marks the first time that a federal agency has been prepared to carry on direct data communications with private-sector organizations for the receipt of required information to be made subsequently available online to the interested public. Many aspects of the project are precedential. Without question, numerous federal, state, and local agencies will be watching the SEC's actions and will be pursuing electronic filing themselves in the next several years. We commend the SEC for its forward-looking initiative.

Electronic filing holds great promise for the future. Being in the industry, we may be in a better position than anyone else to see the advances which lie ahead. We wholeheartedly expect that electronic filing can yield both improved agency mission accomplishment and improved terms under which the interested public can locate and use government information. At the same time, proposed projects should be subject to cost scrutiny, whether of the formal cost-benefit type or otherwise, even if the project is to have some off-budget component represented as being done at "no cost to the government." Electronic filing projects, it appears, will run into the tens of millions of dollars per agency, and the money should be spent wisely.

Moreover, important policy issues should not be neglected in the planning stages. Electronic filing will occasion deep institutional transitions, and we think that agencies should identify and confront the relevant issues that the new systems will call for resolving before the systems are in place. Once they are in place, it may be too late to begin to figure out what policies should govern system operation. We support the approach of gaining operational experience with pilot projects before going full-scale. Nonetheless, since a clear demarcation between pilot and final stages often fails to exist, and because pilots tend to establish future patterns of operation, we find unpersuasive the notion that policy deliberations need not precede an operational pilot. Such sound policy planning will help to realize the promise of electronic filing, a goal which we all share.

A CHARTER FOR ELECTRONIC FILING

Mr. Chairman, our overall theme is that only multiple, diverse, and specific information services can meet the information needs of different users, including federal agencies. The only way for such a diversity to arise is for users to express their demands in market terms through willingness to pay, with entrepreneurs identifying and serving expressed needs and wants. Our vision for the future is that federal agencies will add their demand to existing outside private demand for information of various kinds in a wide array of formats. By so doing, federal agencies will become a powerful propulsive force driving even greater development in highly refined information services. More specifically, we wish to present eight basic points which represent the consensus of our members on electronic filing. We feel that, taken together, these statements formulate a charter for the advance of electronic filing. Let me summarize before going into each issue in more detail.

First, as each agency commences its planning and preparation, it should determine its own functional requirements or demand. It should then make the same determination for outside users in the interested public and compare the results.

Second, government agencies should place primary reliance on the private sector for fulfillment of their own requirements or demand as well as outside requirements or demand.

Third, in procuring services from the private sector, agencies should consider separate contracts for basic and value-added functions.

Fourth, in line with the multiple functions of electronic filing systems, agencies should expect to fund their operations from a mix of filing fees, appropriations, and user charges. Any reliance on barter should be limited in scope.

Fifth, Congressional oversight should focus on the maintenance of open, nonrestrictive information policies, with any exceptions clearly authorized should they prove necessary.

Sixth, agencies should be careful not to create the appearance or possibility of conflict of interest with the primary vendor or vendors.

Seventh, agencies should certify electronically filed database records as official.

Eighth, to provide needed outside perspective, agencies should seek the advice of the interested and expert outside groups which will be providing and using the relevant systems and information.

Now let me take each point in turn.

1. Needs and Market Assessment

Naturally, each agency will have to determine its own needs for machine-readable data in light of its mission and responsibilities. Such needs are best expressed in a functional way, so that the agency does not predetermine the choice of technologies, or the range of products and services, to be offered by private vendors in the area. An agency's own internal needs may or may not resemble private market demand for the data in question, and agencies should not assume that a congruence will exist. If an agency made this assumption and drew up its system development plans accordingly, it would, most likely, stunt rather than promote the growth of multiple, diverse, specific information services attuned to the needs of various users. The government staff user may well have different requirements for timeliness, format, and content from outside users. Accordingly, the technology best suited for internal government use may not also be the best for the different requirements of outside users, and hence, the service designed for internal agency use may be less marketable than any of a variety of other services.

To assess the respective private markets for machine-readable data, agencies will have to turn to survey research. Already, the SEC and the Federal Maritime Commission have done so. We have a concern about the use of front-end studies, whether concept testing or genuine market research, as grounds for agency decision making. For example, the study done for the SEC by Mathematica, Inc., took place before there was a clear definition of what the EDGAR system would look like in operation. Without a clear picture of what was involved, and without any financial commitment, respondents would naturally tend to respond positively to very general questions.

However, this concept test or trial should not be confused with genuine market research. Favorable respondents in the survey should not be turned into customers that the SEC's vendor can ultimately count on. To do so would set an unfortunate example for other agencies to follow in laying their electronic filing plans. EDGAR is precedential here as elsewhere. We are not saying that agencies should avoid exploratory questionnaires of this type. We are saying that their results should be interpreted prudently and not be confused with testing acceptance of a well-defined or nearly completed service. The Mathematica report projects up to 2 million users for online, value-added securites information. A seeming implication is that the SEC's vendor should ultimately have that many customers. User projections matter because the SEC, through various statements, seems to believe it can count on an enormous market. The enormous market will supposedly make it so advantageous to be the SEC's prime contractor that bidders might be willing to offer, to the SEC, staff support services at no charge.

Mr. Chairman, the experience of the information industry is that this estimate, for any current application, is unrealistic. We believe that EDGAR is soundly conceived in its reliance on the private sector for managing a complex web of information technologies. However, reliance on the 2 million estimate will generate large and unfulfillable expectations for the project. The highest penetration yet achieved by any U.S. service — and that after ten years — is nearly 200,000 for the News Retrieval Service of Dow Jones, an IIA member and EDGAR subcontractor. Many other private online efforts in the United States have found their initial estimates overly optimistic. It makes sense, nonetheless, to go ahead with the EDGAR project, which has great value even though attainment of 2 million users remains indefinitely far in the future. For the near term, the Commission would do better to work with a range between realistic best case and worst case estimates informed by actual market experience, being prepared for the worst case should it materialize.

2. Procurement From the Private Sector

To meet society's needs for information, we believe that policy should place primary reliance on the private sector and an open and competitive information marketplace rather than on the public sector for providing information products and services. We are heartened to see that the Office of Management and Budget, after a decade of experience in advanced information systems, has reached essentially similar conclusions in its draft information policy circular published on March 15. That document explicitly indicates that the proposed new policies will apply equally to electronic information systems as to traditional paper-based recordkeeping. Not only will such reliance provide the most effective response to society's diverse and expanding information needs, but it will also bring about the result in a way that will safeguard and enhance our essential freedoms.

Indeed, the health and viability of the financial information sector can in part be attributed to the lack of any significant government competition. For example, there are over 50 information companies selling stock price information which maintain close working relations with the various stock exchanges across the country. Together with other information publishers, both electronic and traditional, they produce a variety of information content in a wide array of formats. Only this kind of diversity can meet the needs of all users, whether institutional or individual.

The preference for private over government production of goods and services is something we don't intend to belabor here. Let us note, however, that there are two distinct levels or stages at which this policy should come into play. The more obvious level is the A-76 level, that is, the resolution of a "make or buy" choice for some new government requirement or program. Prior to that, however, an agency ought to have conducted a systematic canvass of existing private-sector capabilities — service by service, function by function — to see whether the agency needed to conduct any procurement action more complicated than a simple cash purchase of existing services. This latter point is sometimes missed and relates crucially to an agency's assessment of the demands for information services in its area of jurisdiction, whether from outside users or from its own staff. To fail to do the canvass and then do the A-76 comparison and let a large contract does neither the government, the information industry, nor the whole economy any particular good. Something like a government franchise or concession would be created where none were needed. As one result, the capitalization of one firm in the industry, the winning bidder, would derive largely from tax dollars rather than risk capital. By taking this course, the government would have influenced widely the competitive development of information services and processing. The best results come where government translates its needs into market demand to be aggregated with outside private demand.

We might add that these considerations apply equally to the whole cluster of technologies involved in electronic filing: telecommunications, data entry, database management systems, and computer hardware and software.

3. Agencies Should Preserve Fair Competitive Conditions

When an agency lets a contract for a complex, mixed-use system, the primary systems vendor may have several functions to perform, including facilities management, internal staff support, and selling raw or bulk data at wholesale to other vendors. In addition, the incumbent vendor may wish to enter the value-added services field. If it did, it might enjoy a competitive advantage relative to other value-added vendors of enhanced services. How agencies can contract with their incumbent vendors to enter this field while not lending an artificial competitive advantage to them over outside value-added vendors is a serious matter for agencies to resolve.

We see a promising resolution so that the considerable capabilities of an incumbent vendor can be put to best use while a level playing field is preserved for outside value-added vendors. The key is that an agency need not regard its electronic filing project as an indivisible whole. An agency could well divide the project into at least two subsystems to be separately handled and separately procured. The contract for the subsystem devoted to internal processes would essentially be a data processing facilities management contract. On the other hand, the contract for the "external" subsystem would involve receipt, storage, and dissemination. A single vendor could conceivably be chosen to perform both parts, but the administration of the contracts, we believe, must necessarily remain separate. The contractor for the external system may, if it wishes, sell enhanced products at whatever price it determines appropriate. It might, however, voluntarily restrict itself from entering the enhanced marketplace to insulate itself from any possible question about its receiving unfair advantage from its contractor relationship with the SEC. The internal system contractor would be explicitly prohibited from selling any information it developed in the course of performing its duties under its contract.

The external contractor should be required to sell to all who wish to purchase information, either in bulk or individual subsets. There should be no discrimination of any sort based on the identity of the user. In particular, the incumbent vendor would have to provide equal technical interconnection to all outside value-added vendors. With regard to timeliness and speed of access, it is anticipated that bidders may propose different prices for different levels of service. It should be a contract requirement that the contractor, if it proposes to offer value-added services in the market, should have no advantage with regard to timeliness of access or cost.

4. Paying for Electronic Filing Systems

As previously noted, electronic filing systems will support mixed uses of receipt of information from private parties, government staff support, and public access and dissemination. Associated with these functions are filing or input fees, appropriated funds, and user charges or fees. Forward-looking policy, we believe, will seek the best mix of funding from all three sources. There is no reason to rule out any of them. To the contrary, all direct beneficiaries — filers, the government, and users — should expect to bear their fair share of operating and fixed costs.

Few policies set by Congress can be more fundamental than that in Title 31 that the government lives and runs by appropriated funds. Congress has been justly reluctant to make exceptions for agencies even to maintain self-replenishing revolving funds. We see no reason for Congress to depart from its basic appropriations and oversight functions with respect to electronic filing.

We recognize the appeal which off-budget agreements will have in years of enormous federal deficits and agency budget cutbacks. The phrase "no cost to the government" seems to be unanswerable. Upon inspection, however, an assertion is being made that the government can conduct its business better by barter than by cash. We find this acceptable or preferable only under limited circumstances. To create something of value to be traded probably means establishing a valuable special situation, in some ways like a franchise, of some description for a vendor to enjoy. In our view, the SEC and the FMC, both of which have indicated an intent to avoid any reliance on appropriated funds, are on weak policy grounds.

Appropriated funds should be relied on in two distinct circumstances. First, agencies should clearly bear the cost of the internal part of an electronic filing system dedicated to staff support. Like any other government data processing, such facilities management costs must come out of appropriated funds. Furthermore, agencies should also bear their share of the costs of operating any mixed-use retrieval system that serves both government staff and public users. When government staff attorneys or examiners tie up computer ports, they create or impose the same costs on the system as public users. Therefore, they should be charged the same for usage. The only difference would be that government employees' usage fees would be paid out of appropriated funds, while public users would, of course, pay their charges themselves. The absence of charges to the government would imply a cross-subsidy — unjustified, in our view — of staff users by outside users.

We would see an acceptable opportunity for barter, however, as part of a contract with a vendor for the external part of an electronic filing system. An agency could reasonably require delivery of certain tangibles, such as magnetic tapes, as part of overall contract performance and without specific reimbursement. Barter should be limited in such a way, however, for several reasons. As mentioned before, public users should not be burdened, through an implicit cross-subsidy, with the expense of serving agency staff. Second, without limited specifications, an agency might develop a growing and unreasonable "wish list" of off-budget deliverables to be produced by the contractor to prevent an agency's "wish list" to be delivered to it by the contractor from growing unreasonably. Finally, Congress should preserve legislative oversight through the appropriations process.

Our discussion of charging users in accordance with the costs which they impose on the system leads directly to our next observation: filers and public users should contribute their share to the financing of the system from which they directly benefit. We are not aware of any significant controversy yet with regard to filing or input fees from the various business communities that deal with the federal agencies undergoing automation. At the SEC and the Patent and Trademark Office (PTO), for example, filing fees are well established in statute and practice. No new difficulty should ensue from extending the practice from paper to electronics.

Those who electronically file information should expect to pay a filing fee to help defray the "up front" cost of collecting the information. We are not prepared to suggest exactly what such fees should be since circumstances will differ from system to system. Federal filing fees are often set without direct regard to the cost of operations and may even, in some instances, be set low so as not to discourage compliance. Such could be the case with some electronic filing fees.

The matter of public user charges or fees has generated more discussion. Some agencies have traditionally maintained public reference rooms operated entirely out of appropriated funds and without any user fees, even from full-time professional practicioners relying on the agency's resources for their livelihood. Even if statutory language does not require these practices, we readily acknowledge the value of maintaining some level of general public service from taxes. The larger point with user fees, however, is that Congress should not cut the heart out of the burgeoning markets for online securities and patent information, for example, with unneeded and unjustified subsidies to full-time professionals in those areas, who emphatically should pay their own way, regardless of whether the payments they make are to the government's vendor or directly to the government itself. These user groups, such as trademark practitioners, have no special call on the Treasury to provide them with essentially unlimited tax-supported information services. Moreover, by giving away online access, the government could establish a damaging price perception that the information were neither that costly nor that valuable. The private sector might never overcome this hurdle.

However, we recognize that, in some instances, it may be in the public interest for the agency itself to assure access by some who might have difficulty in paying for the regular services provided by the electronic filing system's dissemination. In such instances the sponsoring agency may elect to establish clearinghouses, reference rooms, or depository centers specifically designed to serve such needy individuals. The costs of such services provided as a matter of social policy should, of course, come out of appropriated funds rather than being imposed upon the service vendor to the agency.

Again, OMB's new Circular points in basically the same direction by applying the longstanding OMB Circular on user charges, A-25, to federal information dissemination. Logically, the intent behind this policy should apply equally, whether the charging and payment plan is administered by the government's vendor or by the government itself.

5. Special Statutory Authority for Resale

Agencies' budgetary constraints are pushing them toward finding ways to make the position of systems vendor a more valuable consideration, so as to increase bidders' willingness to provide the required services to agencies for lesser dollar outlays. One proposal is to restrict or prohibit resale of "raw" or "bulk" data in machine-readable form at the wholesale level (there is no question of any restrictions at the retail level). Aside from alleviating budgetary pressure on agencies, we see justification in the restrictions to the extent that purchasers should be made to bear their share of the system's fixed costs. For in the absence of any restrictions, resellers will quickly push the price down very close to marginal reproduction cost. The third of the Commission's seven questions in its Federal Register notice last September 12 asks how this might be accomplished. The SEC's goal, evidently, is to create and maintain substantial market incentives for its primary contractor. We address here the case where any built-in or inherent advantage in timeliness of access enjoyed by the incumbent is not, by itself, sufficient for the incumbent to recoup its costs and make a profit.

The Information Industry Association agrees as to the presence of business advantages to the primary vendor from the resale restrictions in this case, as well as reduced direct costs to the SEC. However, the business or marketing perspective points in a different direction from vital information policies. We would only favor any restrictions reluctantly, because we have so consistently favored open, nonrestrictive government information policies that encourage a multiplicity of information sources by allowing private companies to add value to the information and then make it generally available. Such open government information policies are embedded in the Freedom of Information Act in particular. This Act probably means that any restrictive system cannot be sustained under current law and policy. We see no sensible argument that electronically filed data are not, or should not be counted as, "agency records" within the meaning of the Act. Rather, a straightforward policy determination is needed here to make clear that the basic policy of openness is being circumscribed for a specific limited purpose. What would squarely address the problem, however, is a special statute such as referred to in subsection (b)(3) of the Freedom of Information Act (5 U.S.C. Section 552(b)(3)).

In addition, a copyright basis would often be lacking for enforcing resale restrictions for either of two reasons: 1) no valid copyright existed in some parts of factual material submitted in accordance with government-designed standard forms or formats, where the government has largely mandated the selection, coordination, and arrangement of the data; 2) the Copyright Act, by prohibiting copyright in works of the U.S. government, prevented the government from asserting a property interest in federal data against its own citizens. Even where a valid copyright existed in material submitted to the SEC, and the SEC held an appropriate license for dissemination, users may have some rights of access to material because its submission was mandated for certain public purposes.

Copyright cannot be avoided as a serious matter in a discussion of resale for this reason: whenever the government seeks to sell information content at a price above marginal cost and to maintain that price, it is implicitly asserting an interest in the nature of a property right. This is precisely what section 105 of the Copyright Act is directed against, however. The IIA has forcefully opposed attempts to counter this long-held and well-considered policy, as in our testimony before you last summer, Mr. Chairman, on the FOIA amendments and the royalty provision for commercially valuable technological information. Again, if the resale restriction is necessary, we would prefer legislation or legislative history which honestly stated that the public domain policy for works of the U.S. Government does not prevent recovery of some measure of fixed electronic filing costs from public users.

6. Conflict of Interest Problems

A potential conflict of interest can arise when the government retains a contractor which has a special interest in, or relationship with, the agency or entities who must deal with that agency at the same time that the firm provides database management services to the agency. A significant possibility is that the government could grant such a firm an unfair advantage over its competitors by selecting it as a vendor. In this regard, we want to address both the specifics of the EDGAR-Arthur Andersen case and the broader implications for automation throughout the Executive Branch.

In the case of Arthur Andersen, advance knowledge of new SEC requirements for the EDGAR system, for example, could lend a competitive advantage relative to other accounting or software firms. In addition, rational corporate managers seeking auditors might well conclude that Arthur Andersen were best positioned to advise them on their financial records management, especially as it pertains to required SEC filings.

Based on what we know, we cannot conclude that impropriety exists in the choice of an accounting firm as the EDGAR pilot system operator. There is, however, a more fundamental issue. Considerations of conflict of interest and fair competition should have been as integral to the management of a system like EDGAR as the technical specifications. Let me emphasize that what we find especially troublesome is that the SEC addressed publicly the possibility or appearance of conflict of interest after the fact, rather than before. It would have been prudent for the SEC to have asked for publicly, and received, public assurances of insulation between accounting and system management activities from Arthur Andersen, and any other accounting firm, while writing the solicitation or evaluating the bids. That is, the SEC should have made stipulation about the avoidance of conflict of interest part of the public record all along. In this regard, the SEC did not set the best example for other agencies following in its steps.

We do not see anything inherently unique about this tension in the securities area. Indeed, it is possible to hypothesize numerous examples where a firm could provide database management to federal agencies while at the same time having a special relationship with that agency, or the entities that deal with the agency, or both. For example, an AT&T or GTE subsidiary might want to bid on a system for the FCC. At a minimum, meaningful assurances of propriety should be demanded in such situations. However, we are not ready to say that firms with possible conflicts of interest should be categorically barred from bidding on electronic filing projects throughout the government. Indeed, it is hard to conceive that a single rule would be able to be applied to all cases. The matter would vary with the industry, the agency, and the specific relationship involved. And given our overarching preference for a multiplicity of information sources, we would want to find a way to include as many potential vendors as possible. It would however, as a minimum, be incumbent on each agency to develop criteria to handle this matter.

7. Official Certification Of Databases

In paper-based recordkeeping, there has never been any question that public records custodians have had the power and the function of certifying the contents of public databases as official. We see no reason for change as records are automated. Some level of errors is inevitable, just as with paper records, but the government should, nonetheless, continue to take ultimate responsibility for the factual contents of its files.

In electronic filing projects, agencies may be tempted to delegate an inappropriate degree of the quality control function to a contractor. They should not try to do so. Contractors cannot avoid responsibility for their own performance, which will indeed bear on database accuracy. However, whether computerized records are kept on a government computer or not, their weight derives from the agency under whose authority they were collected and made available. Ultimate responsibility must rest with the agency, which reviews and passes on its contractor's performance. Even more fundamentally, agencies take enforcement actions based on records in their custody. Where no confidential information is involved, public users should have access to the same official information that the agency is relying on, and know it. Moreover, serious or unacceptable lapses in accuracy, from whatever source, could tend to discredit an agency's entire electronic filing effort. The unexpectedly high error rates being encountered in the automated trademark databases at the Patent and Trademark Office, for example, indicate that the quality level of official data should be a subject for continuing agency attention.

8. Public Advisory Function

Finally, Mr. Chairman, we see one additional element as essential to a successful electronic filing effort. For an agency to be sure that it adequately comprehends the choices, values, and interests touched by electronic filing, it should consult with the array of outside groups greatly affected by a transition to electronic filing: registrants, claimants, or other kinds of filers; systems vendors and value-added information vendors; and users from the interested public. Certainly, agency officials should be present at relevant industry-sponsored conferences, symposia, and the like. If an agency were to take initiative itself, we expect it would have to comply with the procedural formalities of the Advisory Committee Act. That course would certainly satisfy our concern, although we do not say that the necessary consultation must take this form. This should not be a controversial proposal, since agencies are motivated to improve their chances of making important decisions that will leave all users, including themselves, satisfied when the electronic filing system is in operation.

We are gratified to see that the Federal Maritime Commission has publicly indicated its intention of forming an advisory body. This is a positive, useful step. The composition, however, is too narrow. Although filers and outside users will be well represented, suppliers of the operating technology and value-added information vendors will not. We believe it should be possible, even with the stakes created by competition for government procurement dollars, to find a fair and ethical way for the government to draw on needed expertise in these areas. In this regard, professional and trade associations can be of service.

Mr. Chairman, this concludes our survey of the basics or fundamentals of electronic filing as we see them now. Naturally, further important issues may arise in the future as agencies gain more experience with electronic filing. The IIA continues to be ready to work with your subcommittee in developing policy for this vital area. We have attached a copy of our comments to the SEC and the map of the information industry and ask that they be included as part of the record as well. We are ready to answer any questions that you might have.

Information Industry Association
316 Pennsylvania Avenue SE Suite 400
Washington, DC 20003
202 544 1969

October 29, 1984

Shirley E. Hollis
Acting Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Reference: File No. S7-31-84

Dear Ms. Hollis:

The Information Industry Association (IIA) appreciates this opportunity to provide its initial comments on EDGAR, the Electronic Data Gathering, Analysis, and Retrieval System. This letter is in response to the Commission notice, "Electronic Filing, Processing and Information Dissemination System," which appeared in the Federal Register on September 12.

The IIA represents more than 300 private-sector companies involved in all aspects of information creation, storage, management and dissemination. Throughout the past 15 years we have concerned ourselves with government policies in the area of information. In the past year or so, we have observed the growing attention federal agencies are giving to the collection and distribution of information in machine-readable form. We have established an Electronic Filing Task Force within the Association to serve as the coordinating group for putting forth our views on this developing phenomenon. The views presented here reflect the considered judgment of the Electronic Filing Task Force and of the IIA's Board of Directors.

INFORMATION INDUSTRY PERSPECTIVE

The IIA has steadfastly sought a policy environment which encouraged competition. More specifically, we have regularly and vigorously opposed the intervention of government agencies in the commercial information marketplace, except under the most stringent controls, because it should not be the government's role to compete with the private sector. The inherent advantages enjoyed by a government enterprise attempting to compete with the private sector — perceived value and cost subsidization, to mention two — can lead to a situation in which private sector competitors abandon the market, leaving the government in the role of a monopoly supplier. The attached position paper, "Meeting Information Needs in the New Information Age," explains why such government conduct is inappropriate in the information marketplace. We were heartened by the SEC's recognition, in your September 12 notice, of the need for the "maintenance of competition." As you know, it is competition, the reflection of the entrepreneurial spirit, that has been the driving force behind the American system and more specifically our industry, including that segment that meets the needs of the securities information market.

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IIA CONCERNS ABOUT EDGAR

Our industry has some serious concerns about the implementation of the EDGAR system. Competition with the private sector is certainly one of our concerns. Our comments are not meant in any way to belittle the efforts of the SEC to apply the benefits of modern technology to your mission; certainly we see the SEC moving in the right direction. But as Congressman Glenn English, chairman of the House Government Information subcommittee, told his colleagues, when discussing electronic filing, "We have to recognize that there are some hard questions presented by the new technologies" (Congressional Record, March 14, 1984, Page H1614-5). We believe the SEC should pay close attention to the thirty-one questions posed by Rep. English as you monitor the implementation of the current EDGAR pilot project.

We also have to question some of the underlying assumptions we see in the system as set forth so far. First, the projection of a market of nearly two million users, the vast preponderance of which are individual investors, may be overly optimistic. We have reviewed the report prepared by Mathematica, Inc. which contains these projections, but have not yet seen the survey instruments used to collect data on which this projection was based. However, we do know that members of our industry who must make business decisions based on future market growth question such ambitious projections.

Second, the assumption concerning the appropriateness and willingness of users of the electronic filing information to fund the SEC's own use of such data is subject to question. User fees, both by statute and OMB directive, are designed to recover only the costs of providing a benefit to an identified user, not additional revenue for agency use. Agencies must not take it upon themselves to generate additional revenues through services provided to the public to fund other activities; doing so, they can, in effect, elude the Congressional oversight built into the budget and appropriation process.

The September 12 notice describes the proposed EDGAR configuration as follows: "The SEC envisions the construction of a contractor-operated processing system divided into two major components. On one side will be a subsystem devoted to receiving, storing and disseminating incoming filing information. On the other side will be a subsystem dedicated entirely to the SEC, comprised of SEC storage and SEC internal processing." The notice further states, "The final terms and conditions surrounding sale prices and SEC ratemaking will evolve throughout the entire process of comment, RFP, proposal submission, and contract negotiations." We applaud this indication of flexibility and apparent willingness to explore alternatives. It is our hope that this spirit extends beyond questions simply of pricing and does indeed extend to the overriding question of system configuration itself. In this hope, we would offer a suggested system configuration that would result in a much better facility.

IIA PROPOSED CONFIGURATION

The heart of our suggestion is that the two subsystems described by the SEC be separately handled and separately procured. Whether a single vendor could be chosen to perform both parts remains unclear to us, but the administration of the two contracts, we believe, must necessarily remain separate. The contract for the subsystem devoted to internal SEC processes would essentially be a data processing facilities management contract, and the SEC should expect to pay for this contract with appropriated funds; we believe that, as in the past, filing fees, which are deposited directly in the federal treasury, will likely more than cover any costs incurred.

On the other hand, the contract for the "external" subsystem may not require funding at all; conceivably, it could even generate revenue. Such results would evolve through the RFP, proposal submission, and contract negotiation process. For this subsystem to work effectively, a number of considerations must be addressed.

> First, proposals for this subsystem should contain a statement of prices the contractor wishes to charge its public users. The SEC, examining various bids, would consider this price level as one of the key factors in awarding the contract. Additionally, the price, if any, the contractor will charge the SEC for transmitting the bulk information to the SEC or its internal contractor should be part of the bid.
>
> Second, in light of the contractor's significant investment, the duration of the contract should be adequate to recoup development cost plus a decent profit. Opportunities for renegotiating points in the contract, especially as they are impacted by new technology, should be built in over the length of the contract.
>
> Third, as is the case now, the SEC should specify the information to be collected and the format in which it is to be filed.
>
> Fourth, the contractor should be required to sell to all who wish to purchase information, either in bulk or individual subsets. There should be no discrimination of any sort based on the identity of the user. With regard to timeliness and speed of access, it is anticipated that bidders may propose different prices for different levels of service. It should be a contract requirement that the contractor, if it proposes to offer value-added services in the market, should have no advantage with regard to timeliness of access or cost.
>
> Fifth, some means of protection of the bulk sales market should be devised. The September 12 notice accurately notes the possible undercutting of the market that one purchaser of bulk information can perform. This area, we believe, is one of the most complex, and must be addressed to assure the success of the project, but we recognize the difficulties faced by the Commission in dealing with it. Restrictions that prevent the further sale of bulk data by purchasers from the contractor, requirements that such resellers provide a fixed payment or prorata share of resale revenue, or some other method of protection must be implemented. Such matters might indeed require legislative authorization; we would urge that such legislation explicitly foreswear any implied claim of government copyright in or ownership of the information so restricted.
>
> Sixth, the contractor for the external system may, if it wishes, sell enhanced products at whatever price it determines appropriate. It might however voluntarily restrict itself from entering the enhanced marketplace to insulate itself from any possible question about its receiving unfair advantage from its contractor relationship with the SEC. The internal system contractor would be explicitly prohibited from selling any information it developed in the course of performing its duties under its contract.

Seventh, the SEC would obtain bulk data from the external contractor in accordance with the terms of its contract. Further, it could purchase enhanced information products from the contractor at market-determined prices.

This set of arrangements would still meet the objectives of affording cost efficiencies to filers; it would accelerate the timeliness with which full disclosure filings are made available to investors; and it would allow SEC staff to employ sophisticated, new information handling techniques in performing the review of these filings. Most importantly, it would allow the competitive information marketplace to play the primary role in regulating the price and availability of securities information, while preserving a limited but vital role for the Commission in assuring equitable access to filing information by all who want it.

RESPONSES TO SEC QUESTIONS

Before concluding, we will turn our attention to the specific questions contained in Section V of the September 12 notice. Our responses will be predicated on the suggested system configuration above.

A. Should the proposed system be financed through user fees as opposed to general tax revenues?

The internal subsystem should be financed by appropriated funds, as for any other government data processing activity. Users of the external subsystem should be charged fees designed to cover the cost of operating that system as well as a reasonable return on investment.

B. Do you think that the Commission should regulate the price of dissemination of electronic raw data?

The price should be proposed as one of a number of components of each bidder's proposal, and the Commission should evaluate this factor along with others in awarding a contract. Opportunity for adjusting this price, as well as other contract provisions, should be built into the contract.

C. What mechanism, if any, do you believe should be employed to protect the SEC contractor's sale price for raw, bulk data? Please include a brief discussion of what you view as the advantages and disadvantages of your proposal.

An outright prohibition on subsequent resale of bulk data, a fixed payment or prorata share of the revenue from such resale, or some other method still to be determined, would be required to protect the contractor from the market usurpation envisaged in the SEC notice. Legislation authorizing such conditions may be required.

D. Do you believe it is operationally feasible for the SEC to guarantee equity of access to all on-line users as suggested in this release?

Assuming this question applies to access to filing information by the general public, we believe the best arbiter for assuring that consumers get what they need and want at the most efficient price is the free-enterprise market. If the SEC establishes a mechanism for equitable access to the bulk information, a host of competitive suppliers will meet the needs of the marketplace. The SEC must assure equity of access to all users, and therefore it may wish to assume the role of "source of last resort." This may be accomplished by providing access to the electronic filings via terminals in its public reference rooms.

E. What is your reaction to the proposed duration of seven years for the contract? Would a longer period result in a lower price to consumers?

We support a contract duration sufficient to assure that the contractor can recoup its significant investments as well as a reasonable profit, but we have no data on which to favor seven years over some other period.

F. Does the financing of the operational contract depend in any way on whether or not all or most companies file electronically with the SEC? (Examine the impact of the value of the database as well as on the filing community.)

Certainly, the value of the database is enhanced as its comprehensiveness increases. If the promised cost savings to filers materialize, we have no doubt that the Commission will realize an ever increasing number of filers availing themselves of the opportunity of filing electronically. Furthermore, our confidence in the entrepreneurial spirit gives us a fairly high certainty that, as the percentage of filings in electronic forms increases, information companies may take it upon themselves to convert remaining paper filings into electronic form (perhaps through character recognition or optical disk scanning devices) for the convenience of their customers.

G. How should "basic dissemination" be defined?

A discrete submission by a filer should be considered the basic record in the system. "Basic dissemination" would consist of providing one or more (including all) basic records. Extracting information from a basic record, even as simple an element as a balance sheet or a table of officers, should be considered "enhanced dissemination," and should, like all other such services, be left to the commercial marketplace to provide.

H. What would be the impact of an approach which did not prohibit the resale of the raw database in bulk form, but required a waiting period of : (1) twenty-four hours; (2) one week; and (3) one month before the purchasers of the bulk data could sell it?

The mechanism proposed in response to question C should adequately address the problem of undercutting the contractor's market for bulk data. Because of the time sensitivity of so much of the information that will be filed electronically with the SEC, we would oppose any scheme that proposed an embargo on the release of such data.

EFFECT OF SEC ACTION ON INFORMATION MARKETPLACE

The Commission is to be commended for its recognition that the application of modern information and communications technology can enhance the accomplishment of its Full Disclosure Program mission. It is apparent, both from press coverage and from official releases, that there is a great deal of enthusiasm for EDGAR emanating from the Commission. While our own review of material, such as the FY 1985 budget request for the SEC and the EDGAR marketability report prepared by Mathematica, Inc., does not lead us to the same optimistic projections for public use, we share the belief that some investors of all types would benefit from the increased speed of access to full disclosure filings and from the ability to subject such filings to computer-assisted analysis. It is members of the IIA, after all, who have created and served the market for securities information both through traditional ink-on-paper publishing and contemporary data communications. These companies also can be expected to continue to meet innovatively the needs of this marketplace as the capabilities of modern information technology continue to expand.

We believe that EDGAR, if not implemented wisely, could be the vehicle by which the government, i.e., the Securities and Exchange Commission, enters the securities information market. Indeed, the Mathematica report states clearly, "The implementation of EDGAR can be viewed as the injection of a major new competitive force in this industry, and can be expected to have substantial impact on these (securities information industry) firms" (Page 77).

Ironically, it should be noted, the financial securities information area has been pointed to by IIA as an example of how information businesses can flourish, absent government competition. Our most recent survey of the industry indicates that in 1982 there were 222 companies selling "economic/econometric/financial/securities information," with revenues of $1.66 billion. Forty-two of these companies had revenues exceeding $10 million, while fully half (111) were categorized as "small" with revenues under $1 million. Moreover, the existing contractual relationship between the Commission and Disclosure Partners has been described as a good example of how a government agency can use the private sector to meet its required information mission while also allowing its contractor and other companies the opportunity to compete, on a level playing field, to meet the needs of the market. It is our hope that the Commission wishes to continue to serve as such a good example.

The injection of electronic processing complicates the issue, however. The process of handling paper documents and creating microfiche copies lends itself very well to providing, as a by-product, finite deliverables (specifically, indexed archival and public reference microfiche). In an electronic environment, the extent of the deliverables is far from finite; information in electronic form can be formatted and reformatted in countless ways to meet needs never conceptualized at the inauguration of the system. It strikes us as unreasonable to expect any contractor to agree to provide such open-ended service on the same no-cost basis which the SEC now enjoys with Disclosure. More importantly, the involvement of the contractor in what are arguably governmental functions, such as review and analysis, increases as the rather straightforward handling of documents is supplanted by more sophisticated manipulation of information under software control.

CONCLUSION

In conclusion, we would like to thank the Commission for the opportunity to share with you our views on this very significant information policy development. It is our perception that implementation of electronic filing systems will differ from agency to agency, but that there will be in all systems broad, overarching policy considerations. It is further our perception that the SEC, through EDGAR, is perhaps further along than any other agency in its development of such a system. Therefore, it is reasonable to assume that EDGAR will be looked to by other agencies for its precedential value. Accordingly, we believe it absolutely essential that the Commission, through extensive coordination with affected publics, approach the implementation of EDGAR carefully and deliberately.

In our opinion, it is absolutely vital that public participation in the development of EDGAR be encouraged to the maximum extent possible. To this end, we would urge you to take steps to make available on a regular basis information, both quantitative and qualitative, resulting from the pilot project. We also would urge you to develop some more formal method for continued involvement of affected publics. We believe an advisory committee on the development of EDGAR would be an essential step. Our industry has a very significant interest that should be reflected and we would be glad to recommend some individuals for your consideration for membership on such an advisory body.

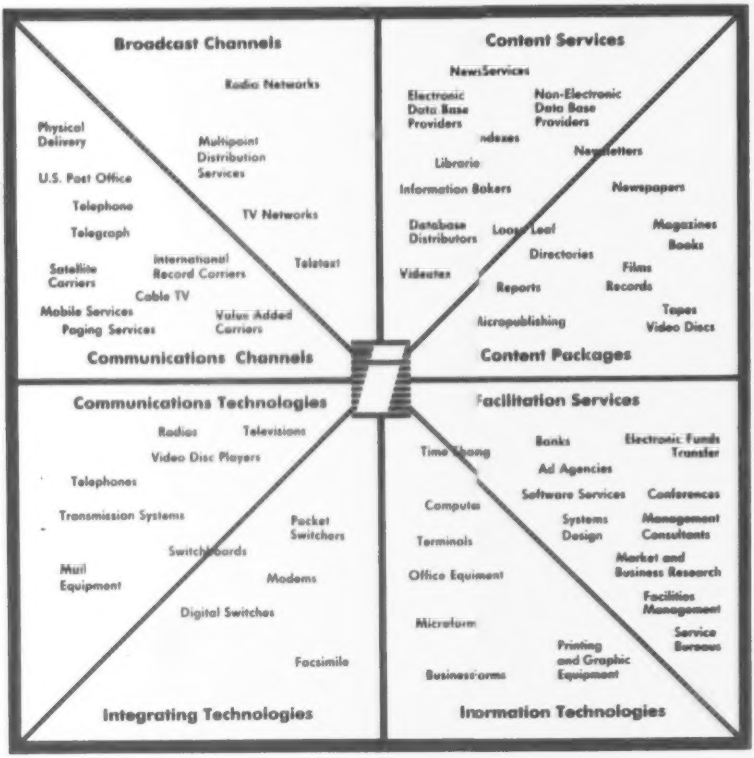
Sincerely yours,

Robert S. Willard

Robert S. Willard

Enclosure

INTEGRATING AMERICA'S INFOSTRUCTURE


Broadcast Channels
Radio Networks
Physical Delivery
Multipoint Distribution Services
U.S. Post Office
Telephone
Telegraph
TV Networks
Satellite Carriers
International Record Carriers
Teletext
Cable TV
Mobile Services
Paging Services
Value Added Carriers
Communications Channels
Content Services
NewsServices
Electronic Data Base Providers
Non-Electronic Data Base Providers
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Newsletters
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Information Bokers
Newspapers
Database Distributors
Loose Leaf
Magazines
Books
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Reports
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Content Packages
Communications Technologies
Radios
Televisions
Video Disc Players
Telephones
Transmission Systems
Packet Switchers
Switchboards
Mail Equipment
Modems
Digital Switches
Facsimile
Integrating Technologies
Facilitation Services
Banks
Electronic Funds Transfer
Time Sharing
Ad Agencies
Software Services
Conferences
Computer
Systems Design
Management Consultants
Terminals
Market and Business Research
Office Equiment
Facilities Management
Microform
Service Bureaus
Printing and Graphic Equipment
Business Forms
Inormation Technologies

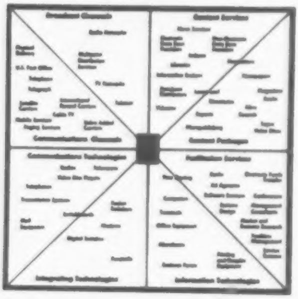
An Article Explaining the Informatio Industry Map
by
Paul G. Zurkowski, *President*, Information Industry Association

INTEGRATING AMERICA'S INFOSTRUCTURE

Paul G. Zurkowski, *President* Information Industry Association

Abstract

The *INFOSTRUCTURE* is defined by using a map of the information industry to show the interrelationships of eight industry segments: content services, content packages, facilitation services, information technologies, integrating technologies, communications technologies, communications channels, and broadcast channels. The key force for integration is the information content that holds the industry together and gives it a raison d'etre. The criteria for identifying information businesses are identified and each segment of the map is reviewed in relation to these parameters. A new, vertically integrated *INFOSTRUCTURE* is revealed, based on information and communication technology and designed to deliver information content.



INFOSTRUCTURE is a play on the word infrastructure. Although sometimes overused, infrastructure has proved to be a useful term that embraces the myriad resources necessary to support a particular activity, be it a metropolitan area or a corporate entity. America's *INFOSTRUCTURE* is used similarly to denote the myriad elements necessary to support the sophisticated information-handling capability that distinguishes the United States economy, enhances its productivity, and challenges our available human talent to be all that it can be.

Porat provided an impetus to the recognition of the economic significance of information in his analysis of the national accounts structure that distinguished among agricultural, industrial, and informational activities. 1/ His analysis defined 46% of the economy as informational in nature. Although he did include in the informational category, some activities that could have been classified as industrial, this blurring of lines between the sectors has not detracted from his results, and the interested public has benefited from sharing Porat's analysis and thesis.

Elements of the *INFOSTRUCTURE* that he recognized and attempted to measure are already in place or clearly outlined in every organization's three-to-five-year plan. What isn't yet evident is how rapidly these elements will integrate. The resulting integration is certain to have a profound multiplier effect on the capabilities of the component parts and on our nation's overall capabilities.

But there is a fundamental definitional problem encountered in any attempt to analyze the elements of the *INFOSTRUCTURE* and to measure, or forecast, their impact. It is the purpose of this paper to provide a working definition of the industry and to address the integration that is occurring in the *INFOSTRUCTURE*: integration of hardware manufacturer with information handling or processing, integration of information content creation with communicating capabilities, and more. This attempt is far from the first to provide such a framework for analysis, but let us hope that it, like those that have preceded, will be a catalyst to stimulate discussion and improve our preparations for the coming integration.

DEFINING THE INFORMATION INDUSTRY

Many Times people respond to the introduction of the concept of the "information industry" or "information economy" by saying, "Oh, you mean the computer industry." The significant influence of the computer in the information revolution makes this an understandable response. Professor Anthony Oettinger, at the Program on Information Resources Policy, Harvard University, developed a map of the information industry based on the relationship of various parts of the industry to computers. In his definition of the industry, Dr. Oettinger placed the computer at the center of the map and arrayed the other elements around it, moving from the left side of the map, which he designated conduit, to the right side, which he called content, and from the top, which he called products, to the bottom, which he called services. 2/

Another version of an information industry map was developed by Larry Day, then located at the Information Technology Group as the corporate planner and now senior vice president for research at Business International Corporation. His map is divided into eight segments, each arbitrarily the same size. Reading in clockwise fashion around the map and beginning at the one o'clock position, the map includes:

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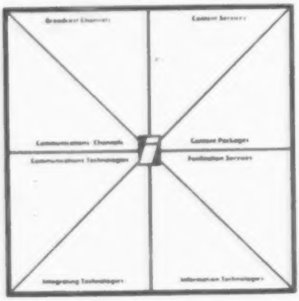
- Content Services
- Content Packages
- Facilitation Services
- Information Technologies
- Integrating Technologies
- Communications Technologies
- Communications Channels
- Broadcast Channels [3]

(Figure 1)



The integration of these segments of the map and the respective subindustries they each represent can be compared to the task of establishing a conference of highway users. If the *INFOSTRUCTURE* exists to facilitate the movement of information (the equivalents or counterparts of people, events, and artifacts), then the integration of the *INFOSTRUCTURE* has a focus similar to that of a highway users' conference. What moves through the system, in both cases, holds the system together and gives it a raison d'etre.

The integrating force for the *INFOSTRUCTURE* is the need to move information content. The key to understanding the integration of all the diverse parts of the *INFOSTRUCTURE* is the recognition that the objective of the *INFOSTRUCTURE* is to create, communicate, and deliver information useful to all the economic, social, and political activities of the country. Using Day's map, one can review the major components of the industry, can understand how the parts relate to one another, and can highlight the developments in each segment moving the industry toward integration.

The map can be subdivided into two major segments to distinguish information itself from the technologies through which it travels. Part I will review the three sectors of the map that address information content businesses and Part II will review five segments of the map that address information technology resources.

CHARACTERISTICS OF THE INFORMATION BUSINESS

Prior to examining the map one must to understand the characteristics of information industry and the information businesses within it. The function served by the information industry is to deal with a basic human condition called the "cognitive screen." Everyone is a product of his past. Each automatically screens out information deemed irrelevant to current concerns. This allows individuals to handle the information explosion.

Futurists and others who seek to synthesize new developments seek consciously to remove their cognitive screens so as to recognize the relevancy of seemingly disparate developments. The information business consciously seeks out people with common cognitive screens and packages its information to penetrate the cognitive screens of the people for whom the information content has value. This, in turn, leads the information company to develop a number of distinctive characteristics or attributes:

1. *Information Companies Create Their Own Products*
   Information companies create their own products, in contrast to traditional book publishers which maintain a stable of authors to write materials that the publishers then edit, package, publish, and market. Many information companies do rely on outside sources for their raw material, but in the process of adding value to these data they make them their own. Although copyright is generally considered an author's statute, it is used by traditional publishers to create a proprietary position on which the publishing and marketing investment can safely be made. In contrast, it is the information company itself that has a legitimate claim to a copyright for the author functions it performs in adding value to information.

2. *Information Companies Maintain Close End-User Relations*
   As contrasted to concerns about titles in print and the condition of a backlist, the information company works closely with the people who actually use the information product or service being provided. This relationship creates a key role for the customer service people who are expected to translate user needs into product enhancements and new product ideas. [4] This characteristic of information companies results in the implementation of criterion 3, customization of products, and criterion 4, flexibility in delivery media.

3. *Information Products Are Customized*
   Close user relations lead directly to a process of customizing the information service provided. The product is often delivered in "custom" packaging, whether or not it has been customized in all aspects. In addition, customers will seldom find information products on a discount table. Producers and users of information alike know that out-of-date information is "disinformation" and cannot be discount priced.

4. *Information Companies Are Media Independent*
   An information company must be media independent or must use a multimedia approach. Once an information product is marketed, numerous applications for the content of the product will quickly become apparent. Often these needs can better be satisfied in media other than the medium in which the product was first offered. To fail to provide the information in these alternate media forms, to fail to take a media-independent posture, is to concede to competitors shares of the market for the information that can be served in different media formats.

5. *Information Products are Decision Directed*
   The object of an information company is to get its information product or service into the mainstream of the decision-making processes of the user. Information company products are decision directed. Information companies recognize the principle that users need information, not for its intrinsic value, but because it assists them in making sound judgements. Information is like the proverbial quarter-inch drill bit: millions are sold each year, not to people who want drill bits, but to people who want holes.

6. *Information Companies Price on the Basis of Benefits Provided*
   Pricing of information is based more closely on what it would cost the end user to reproduce the product than on a pro rata share of the cost of producing the information. This factor distinguishes the information company from the traditional publisher since the publisher, when marketing its product, anticipates or forecasts a sales volume, packages and promotes the product to appeal to as wide a market as is feasible, and calculates price on some multiple of each volume's "first-copy cost." The information company, in contrast, prices the product on the basis of what benefit it will bestow on the end user.

7. *Information Companies Are Repositories of What's Known or Knowable*
   A seventh criterion was identified in a discussion with a public relations firm that claimed to meet all the above criteria (as it clearly may). But what a PR firm does not do is serve as a repository of what is known or knowable about a given area of business or human activity. Most information content companies, by definition, do so.

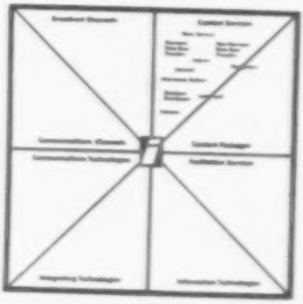
8. *Information Companies Perceive Their Product to Be Information*
   The essence of information company activity is one of perception. If the information company recognizes that its basic product is information content, that firm is in the information industry whether or not it meets any or all of the above criteria. If the perception exists, the pattern of behavior is sure to follow.

PART I - INFORMATION BUSINESSES

Defining and distinguishing the first three map segments is vital to an understanding of the whole map, and thus the whole industry, but even among the companies in the first three sectors of the map - information content services, information content packages, and facilitation services - the information companies are distinct and distinguishable to the extent that they fulfill the above criteria.

CONTENT SERVICES

(Figure 2)



News services, databases (electronic and otherwise), indexes, libraries, information brokers, database distributors, and videotex appear in the content services segment. Two services, newsletters and looseleaf services, overlap both the content services segment and the content packages segment. Of all industry segments represented on the map, those businesses in this sector most closely comply with the above criteria and are most likely to qualify as information businesses.

The Information Industry Association survey of the 1979 revenues in a universe of 1,023 U.S. firms roughly equivalent to the content services segment of the map, which generated (in the for- profit sector) approximately $10 billion and was growing at a rate of 20% per year. The report indicated that in 1978 inprint revenues of this universe were 75%, whereas electronic database revenues were just 11%. The 1979 figures showed 72% for inprint and nearly 15% for database revenues. Considering the overall growth rate of 20% for the universe, the growth rate of 35% for electronic databases was significant and represented a more dramatic growth than their 3% increase might otherwise imply. In a growing market, databases show a stronger than average growth and an increasing market share.

services in several functional categories and, of course, derive revenue from competing in these various lines of business. Thus, the 1023 companies in the survey universe are actually equivalent to 1693 suppliers of information services.

(Figure 3)

BUSINESS OF INFORMATION REPORT 1980

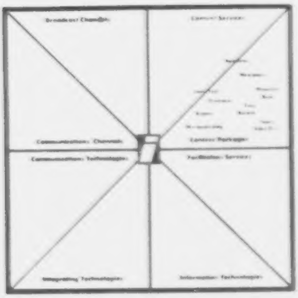
EXTENT OF INTEGRATION AMONG FIRMS IN U.S. INFORMATION INDUSTRY BY FUNCTIONAL CATEGORIES – 1979 NUMBERS OF FIRMS SHOWING INTEGRATION

	PRIMARY INFORMATION	SECONDARY INFORMATION	COMPUTER BASED	INFORMATION RETAILING	SEMINAR/ CONFERENCE	INFORMATION SUPPORT	ALL OTHER
PRIMARY INFORMATION	■	130	140	91	88	43	75
SECONDARY INFORMATION	130	■	111	88	43	52	39
COMPUTER BASED	140	111	■	64	39	78	66
INFORMATION RETAILING	91	88	64	■	46	48	46
SEMINAR/ CONFERENCE	88	43	39	46	■	35	45
INFORMATION SUPPORT	43	52	78	48	35	■	59
ALL OTHER	75	39	66	46	46	59	[illegible]

A similar survey is being carried out in 1983 to measure the performance of this segment of the industry in 1981 and 1982. It is expected to provide some additional trend indicators and build on the trends identified by the earlier survey.

CONTENT PACKAGES

(Figure 4)


Broadcast Channels
Content Services
Communications Channels
Content Packages
Communications Technologies
Facilitation Services
Integrating Technologies
Information Technologies

In addition to newsletters and looseleaf services, which are in both categories, Day includes in the Content Packages segment newspapers, magazines, books, directories, films, reports, records, tapes, micropublishing, and videodiscs.

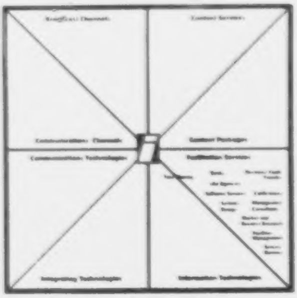
The information activists in the Content Packages sector show evidence of movement toward the Content Services sector. This shift is expressed in their adoption of the characteristics of information businesses as defined above. For others, however, the perception that information content is their business is lacking. As a result, the business patterns that mark the information industry are missing also. In addition, most participants in this sector are media dependent. Their products are tied to the single specific medium through which those products have historically been delivered. They also tend to cost-price their product based on multiples of their "first-copy" costs.

The transition to an "information content" perception of the business is not easy. Many participants in this segment serve the mass market and have difficulty seeing how they can offer their product in electronic or other media without ending up competing with themselves. The information activists, on the other hand, recognize that they have to compete with themselves to learn how their products translate into and are priced as alternative media products. They recognize that they cannot afford to give up shares of their market to innovative competitors.

It should be recognized that, in intellectual property, each profitable operation is a fragile thing. Companies cannot be faulted for concentrating on keeping their operations working and intact notwithstanding the rapid change on the periphery of their businesses.

FACILITATION SERVICES

(Figure 5)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The kinds of businesses included in Facilitation Services fall into four close-to-the-information-content group categories:

1. The processing of other people's information: time sharing and service bureaus.
2. Transaction processing: banks, electronic funds transfer.
3. Turnkey services: software services, systems design, facilities management.
4. Targeted services: conferences, management consulting, market and business research, and advertising.

Of the above categories, facilities management, conferences, management consulting, and market and business research are all included in the IIA survey universe and, therefore, counted in the $40 billion 1979 revenues mentioned with respect to content services.

1. *Information Processing*

As noted on the map, time sharing bridges two segments: facilitation services and information technologies, presumably on the assumption that time sharing is a "technology" in the Greek sense of the word, "a process capable of producing a reproducible result." Time sharing provides access to the information technologies for a group of users that do not have the desire or ability to support in-house computer services.

At one time a distinction could have been clearly drawn between the information content businesses and the data processing businesses. Now, however, it can be said that information companies and data processing companies together are creating information - retrospectively, concurrently, and prospectively. The data processing sector is beginning to reach out to the information content business and, as a result, is beginning to be integrated into the *INFOSTRUCTURE*.

Traditional data processing firms, represented in this category by time sharing and service bureaus, still process information owned by others and return the information to these firms in different forms or arrays. Thus, in a one-to-one communications process, ledgers, balance sheets, inventory records, and personnel records are all machine processed in approximately the same way accountants have handled the information manually. Data processing has, in effect, automated the accountant's "book."

The information industry approach, on the other hand, is to write its own "book." Not only does a firm own the information it handles, but it also sells to a variety of customers products and services based on that information. It is, in addition to its other characteristics, a one-to-many communications phenomenon. With the advent of distributed data processing and unrestricted by government regulations, the data processing sector has begun moving toward the one-to-many business concept.

Data processing firms now offer a combination of time sharing, information distribution, and even hardware and equipment sales. This is exemplified by database supermarkets such as the DIALOG Information Service. Several econometric firms prepare forecasts using the information equivalents or counterparts of people, events, and artifacts in retrospective time series data. One data processing company has an "author" service that supports the database publishing efforts of other firms, making their files available online through a worldwide system. Another company has a contract to produce and disseminate real estate multiple listings information directly to real estate brokers. The services offered by these information activists meet many of the criteria for information services.

The connection to the hardware portion of the industry can be seen in Mead Data Central's operations, which until recently delivered information services to lawyers exclusively on a unique, user-friendly terminal. McGraw-Hill Information Services Company still leases terminals to some customers that prefer to depend on it to keep the equipment up-to-date or do not wish to make the capital investment required to obtain access to the available information services.

Nevertheless, many data processing companies continue to think in data processing terms, and have not yet reached the conclusion that their services are information services. As a result, these companies are not yet as effective as they might be if they were not so "media dependent" or tied to data processing thought patterns. Harold McGraw, Jr., has emphasized the talent-based nature of the information business.[5] Talented individuals with the information industry perspective are needed by these data processing firms to bring their information services fully into the information content business.

2. *Transaction-Based Services*

Banks and the electronic funds transfer mechanism are place- holders on the map for a whole array of transaction-based services. Others would include catalog services (electronic and otherwise) and a variety of advertising-based services in videotex (essentially per-inquiry transactions), as well as traditional media and others. The significance for the future of these transaction services is that they accelerate and give form and substance to what Paul Hawken in his book, *The Next Economy*, calls consumer disintermediation.[6] According to Hawken, disintermediation, a term taken from banking, means the ability of consumers to eliminate the middleman and to deal directly with the source. This is a characteristic of the information services generally, with customers dealing directly with producers. Disintermediation will have increasing impact on the nature of our economy, on the nature of services available to the public, and certainly on the continued integration of information into the life stream of the country and the economy.

3. *Turnkey Services*

A whole group of turnkey information services have sprung up to help users do their own information handling — from processing their own information with software packages to operating an information center designed and installed (or designed, installed and operated) for them. These activities are facilitated by companies with strong human skills, technical knowledge, and technological capabilities.

The experience gained by these companies in performing these contract services provides them strengthened capabilities with which to develop other products and services, a process of integration itself. MAXIMA Corporation illustrates this approach; its "information factory" has evolved from a small minority-owned firm. Warner-Eddison Associates in the Boston area is another example of this type of integration.

4. *Targeted Services*

Targeted services such as conferences, management consulting, market and business research, and advertising represent somewhat narrow approaches to specific information needs of specific kinds of users. They exist in a kind of "spot market" to respond to timely needs of narrow market segments. They are like information content companies in many respects, but are most likely to differ on criterion 7: they generally do not seek to be repositories of what is known or knowable in a given area, preferring to sell the fact that they can, for the given spot in the market, find out what is relevant and important and deliver that to their customers.

J. Walter Thompson has taken the information plunge by creating a database of the knowledge it finds useful in its business. It produces AMI (Advertising/Marketing Intelligence), a database first distributed through the New York Times Information Service and now available via Mead Data Central. Here is an example of an advertising agency undergoing integiation and becoming a repository of information.

PART II — INFORMATION TECHNOLOGY BUSINESSES

Since the Carterphone decision allowing "foreign" (non-Bell) instruments to be connected to Bell system services, a fantastic revolution has occurred in the United States that has made it yet again the envy of the world. A whole new vertically integrated communications/information technologies infrastructure is being put into place whose purpose is to deliver information content. Widely different businesses are striving to find the right place for their technological services and talent in this new *INFOSTRUCTURE*.

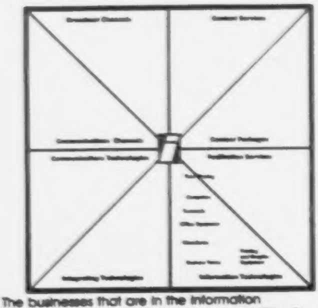
An easy-to-understand example of the integration involved is the advent of videotex and teletext. Videotex requires the integration of computers, telephone systems, and television technologies; teletext requires computers, broadcast systems, and television technologies to be integrated.

The technological integration of these differing technologies involves identifiable technical problems, issues, and opportunities. The market integration of these technologies, with the information content to be delivered to business and consumer markets, involves the writing of a whole new book, a book, however, based on the same familiar objective, delivering information content to the people for whom it has value by identifying and penetrating their cognitive screens.

Videotex and teletext are illustrative of the much larger whole - that of integrating the new communications/information technology apparatus of the country. Like videotex and teletext, these opportunities have both technological and market integration aspects.

INFORMATION TECHNOLOGIES

(Figure 6)



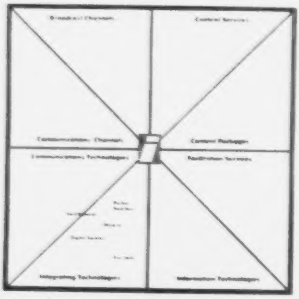
The businesses that are in the information technologies segment of the map, in addition to data processing, are computers, terminals, office equipment, microforms, business forms, and printing and graphic equipment. These are the "bells and whistles" businesses with which the information age is most readily identified. Like the printing press, which served the bellwether function leading civilization into the Renaissance period, these information technologies have raised today's civilization to a new plateau of human achievement, resourcefulness, and literacy.

Like the Renaissance period, which documented what had been achieved up to that time and thus spurred an outpouring of new achievement, today's information technologies have given us the means to capture and manipulate the vastness and complexity of information resources to lead us to a renaissance-like outpouring of new human capabilities. The information technologies not only give us the ability to record and store vast quantities of information equivalents, but also enable us to manipulate these and to test our plans and forecasts in the process.

The visibility and impact of these technologies also have attracted the efforts of competitive technologies developed abroad.

INTEGRATING TECHNOLOGIES

(Figure 7)


Broadcast Channels
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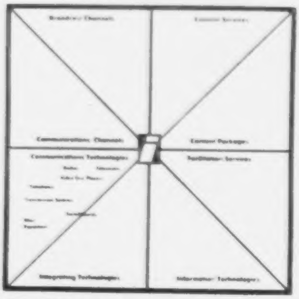
Day identifies several technologies that are neither information technologies nor communication technologies. His map places packet switching, modems, digital switches, facsimile technologies, and switchboards between the information and communication technology segments, with switchboards on the communication technologies border. These technologies are critical to the process of pushing back the boundaries that limit the communication of information. Packet switching, for example, has opened up the whole database electronic publishing market.

To be a technology forecaster for the information business is to watch for ways in which technologies are pushing back the boundaries for what can be done in the future. A current case in point is the rapid development of new facimile technologies that are about to burst on the information scene as universal terminals.

COMMUNICATIONS TECHNOLOGIES

The category of communications technologies can be divided in two parts. The first addresses the on-site reception equipment: radios, television sets, videodisc players, and telephones; and the second addresses the equipment used in point-to-point communications: transmission systems, mail equipment, and the like. Competition among suppliers of these technologies arising from the Carterphone decision and subsequent deregulation efforts has stimulated great innovation in these technologies, thus giving consumers "hands-on" experience with advanced technologies. This experience prepares the way for the further integration of the capabilities of the information age by assuring service providers, be they information content suppliers, content packagers, or facilitation service providers, a population that is increasingly ready technologically to use their respective services.

(Figure 8)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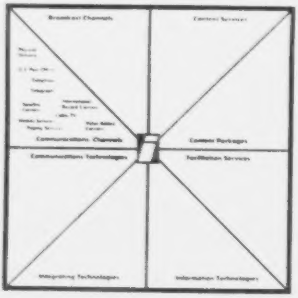
INFOSTRUCTURE integration for this sector is exemplified by the British experience with videotex. In England, where telephone use was averaging a phone call per day per person, videotex was conceived as a way to obtain more widespread use of the telephone system capability. To the extent that it has been used, videotex has done just that, and in the process it has extended the ability of average citizens to think about, gain access to, and use sophisticated information-handling resources. This extends and expands the meaning of the words "functional literacy."

COMMUNICATION CHANNELS

(Figure 9)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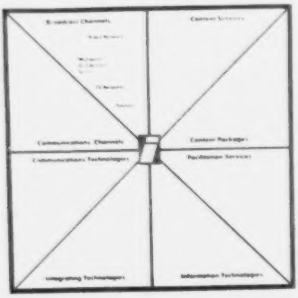
This segment includes surface delivery of physical objects as well as wired, wireless, and satellite channels for communicating information equivalents or messages. Fundamental to providing access to remote stores of information, these channels are increasingly moving toward digital transmission. This trend reflects further the integration of the *INFOSTRUCTURE*. The channels offer one-to-one, one-to-many, and many-to-many communication opportunities worldwide. It has been estimated that as much as 90% of the operations of those channels and the technologies that support them are concentrated in 15 of the larger nations of the world. However, their worldwide use is growing. The demand among developing nations for a "New World Information Order" emphasizes a strong nationalistic impetus behind this growth. 7/

BROADCAST CHANNELS

(Figure 10)



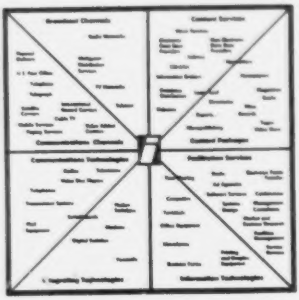
The list in this category includes radio and television networks and other broadcast services, multipoint distribution sources, and teletext. Simply listed together, these make up a major portion of the ways people find out about the world around them. It is therefore important to note some trends in this area:

- Radio lost its advertising marketshare to television in the early 1950s. Radio has regained its marketshare as a result of the development of esoteric FM broadcasting. Radio stations have proliferated, each serving a very well-defined market segment: rock and roll, blues, jazz, country and western, or classical music.
- In television the vertical blanking interval (VBI), the space between frames, was first used to communicate in writing what was being spoken for the benefit of the hearing impaired. More recently the VBI has been used to provide an offering of targeted entertainment and information services via teletext. This new broadcasting service allows the individual customer to select from a menu of information alternatives, replicating the radio trend toward segmented markets.

As broadcasting customizes its services for specialized markets, it becomes narrowcasting, and it begins to conform to the characteristics of information businesses. For information businesses, the broadcasting experience suggests a parallel to the personal computer developments, with new markets for local or esoteric databases supplementing the existing markets for national and international database services. These phenomena emphasize the proximity of communications channels to information content services on the map, and the circle is complete.

CONCLUSION

(Figure 11)



Otto Eckstein has indicated that the fully integrated information company is the one likely to be most profitable and best able to survive difficult economic times. 8/ If we watch the flow of information rather than the individual characteristics of specific technologies, major integration of the *INFOSTRUCTURE* can be seen to be under way, and information companies, the producers of content services, are causing that integration:

1. By producing their own products in multi-media formats, information companies are forcing various technologies to work together to deliver their products.
2. By offering decision-directed services, information companies integrate themselves and their products, and the technologies on which they travel, into the life stream of other enterprises.
3. By value pricing their products, information companies are funding the practical research necessary to establish "theories of use" essential to integrating content and technologies. 8/

8

4. By focusing on information content, information businesses signal other participants in the *INFOSTRUCTURE* of the need for integration.

This integration of the *INFOSTRUCTURE* holds great promise for the future and for the development of sound economic, social, and political institutions. Thinking through this integration can assist companies in planning their future growth and development consistent with, and with the support of, the forces of integration.

For those who are looking at this vertically integrated *INFOSTRUCTURE* and the myriad industries involved in order to identify where they fit and how their businesses can grow with the whole structure, the messages are clear: stand-alone enterprises run the risk of disintermediation and even elimination; new opportunities are built into the integration of the *INFOSTRUCTURE*.

READINGS

Cuadra, Ruth; Abels, David M; Wanger, Judith. *Directory of Online Databases*. Santa Monica, CA: Cuadra Associates, Inc. Vol 4, #1, Fall 1982.

Hawken, Paul. *The Next Economy*. New York: Holt, Rinehart & Winston. 1983. Chapter 5 *The Information Economy*.

Henderson, Faye; Rosenau, Fred. *Information Sources 1984*. Washington, DC: Information Industry Association. 1983.

Horton, Jr., Forest W. editor. *Understanding U.S. Information Policy: The INFOSTRUCTURE Handbook*. Washington, DC: Information Industry Association, 1982, 4 volumes.

Information Industry Market Place 1983. New York: R.R. Bowker Co., 1982.

Vogel, Ezra F. *Japan as Number 1*. New York: Harper Colophon Books, 1979. Chapter 3 *Knowledge: Pursuit and Consensus*.

FOOTNOTES

[1] Dr. Marc Uri Porat, *The Information Economy: Definition and Measurement*, Washington, D.C.: U.S. Department of Commerce, Office of Telecommunications, May 1977.

[2] John F. McLaughlin, Anne E. Birinyi, *Mapping the Information Business*, Cambridge, MA: The President and Fellows of Harvard College. "The Information Business Map," *Planning Product Innovation*, Washington, D.C.: Information Industry Association, 1981, p. 70.

[3] Our map derives from a more complex version developed by Larry Day. The map being described maintains the integrity of the Day version. Day estimated 1980 revenues for seven of the eight segments as follows:

1. Content Services $1.7 billion
2. Content Packages $37.9 billion
3. Facilitation Services $25.9 billion
4. Information Technology Providers $36.8 billion
5. Integrating Technology Providers $2.1 billion
6. Communications Channel Technology Providers (not estimated)
7. Communications Channel Providers $69.4 billion
8. Broadcast Channel Providers $10. billion

[4] *The Business of Information Report 1980*, Washington, D.C.: Information Industry Association, 1981. *The Business of Information 1983*, Washington, D.C.: Information Industry Association, November 1983.

[5] Harold W. McGraw II, "Facing the Future While Keeping an Eye on the Bottom Line," *Business Realities in the Information Industry*, Washington, DC: Information Industry Association, 1983, pp. 2-12.

[6] Paul Hawken, *The Next Economy*, New York: Holt, Rinehart & Winston, 1983, Chap. 8 "Disintermediation."

[7] *Many Voices, One World: Communication and Society, Today and Tomorrow (Report of the International Commission for the Study of Communications Problems - The McBride Report)*, New York: UNIPUB, 1980.

[8] Otto Eckstein, "The Economic Outlook for the Information Industry," *The Information Industry: The Outlook for the 1980s*, Washington, DC: Information Industry Association, 1982, pp. 2-22.

Mr. ENGLISH. Mr. Cooper.

STATEMENT OF BENJAMIN Y. COOPER, SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS, FINANCIAL PRINTERS ASSOCIATION

Mr. COOPER. I am Benjamin Y. Cooper. I am speaking today on behalf of the Financial Printers of America, a special industry section of the printing industries of America.

The concern of the Financial Printers of America over the development of EDGAR is an obvious one. We are involved in the printing, filing, and distribution of printed documents such as the prospectus, which have been to this date the primary vehicle for carrying out the SEC's disclosure mandate. To the extent that the printed document is supplanted by electronically transmitted information, our industry is obviously affected.

Nevertheless, we have recognized that in order to survive, we must adapt as an industry and as individual companies to rapidly changing technology. As a matter of fact, virtually every one of the companies in the financial printing industry has converted to computerized typesetting and is capable of electronically transmitting information and documents virtually anywhere in the world. As an industry, we have developed state of the art sophistication in this area.

When the SEC first proposed the EDGAR system and explained the internal problems they were experiencing in terms of receiving, processing, reviewing, and storing vast amounts of paper filings, we were not only sympathetic but we extended to them our immediate cooperation to assist in solving problems involving areas where our expertise in the preparing, handling, and transmission of information would be immediately helpful and constructive.

In that spirit, we have made available to the SEC the total resources of our industry. The FPA and its individual companies have assigned expert personnel and committed millions of dollars of resources in order to assist the SEC in solving its immediate needs. Many of the companies in our industry immediately signed up as volunteers in the SEC's pilot project for EDGAR and have participated in the initial filing stage. In addition, some of our companies have prepared and effected electronic filings on behalf of their customers in the EDGAR Pilot Program.

Not all of our suggestions and recommendations to the SEC even in the technical areas have been accepted and adopted, but we had not realistically expected that such would be the case. However, we do feel that we have made a significant contribution to the EDGAR project and we feel that the comments we have to submit to the subcommittee are constructive and trust that they will help all of the parties who will ultimately be affected by EDGAR better understand its direction and ultimate goals, as well as the timeframes for their achievement.

Concerns of the Financial Printers Association are as follows: At the present time, every investor, particularly the small individual investor, receives at no cost all of the data and information deemed by the SEC to be relevant and necessary for that investor to make an informed investment decision. The vehicle by which this information is made available is a copy of a prospectus and other filed documents.

It seems that the objectives of the SEC's EDGAR project have expanded from the original goal of automating their internal procedures and providing more timely dissemination of information to eventually mandating electronic filing of all documents, and even further to the creation under the SEC auspices of a vast data base containing not only SEC filings but also other financial information. The SEC not only plans to electronically disseminate all of their filed information to the investing public, but also appears to plan the elimination of the printed prospectus and other material as a method of disclosure to the investor.

We see several problems with that approach. Those investors who do not have the availability of a home computer may be denied disclosure by the elimination of the convenient, portable, and readily accessible printed prospectus. The small investor will be disadvantaged vis-a-vis the institutional investor who has the resources to afford the latest and most sophisticated computer equipment and software. The small investor who now receives total disclosure at no cost will unquestionably be burdened with some presently unascertainable fee for accessing the disclosure information from the SEC-controlled data bank.

The supplantation of the easy to comprehend printed disclosure document with which the individual investor is obviously quite comfortable with a program to impel that investor into the computer age on an unrealistic time schedule seems hardly appropriate to fulfill the SEC's basic responsibilities. The need to eliminate from any electronic system the presently inherent problems of security of information, computer errors and potential for manipulation of data are obvious. Other Federal agencies are currently encountering such problems.

After 50 years of dealing with the printed document as a dissemination vehicle for information in the fragile and volatile securities market, the SEC has all but eliminated those problem areas from its present system. The undertaking of such fundamental and basic changes in a disclosure system which was originally designed by Congress perhaps should involve the participation of Congress as well as other parties who will be directly affected.

I would point out we noticed in the prepared statement by Mr. Shad this morning assurances the SEC did not intend to do away with or follow the pattern we anticipated with the prospectus. We were glad we made that statement. We wanted to make our statement part of the record to reaffirm our interest in maintaining the prospectus.

The present system planned by the SEC for dissemination of filed information and data has been to propose to engage the services of a single vendor who will have the exclusive contractual right to make available and communicate all filed SEC data to investors. Unquestionably, that contractor will have to incorporate in their system some method of charging fees to the investor in order to recover the millions of dollars needed to invest in the establishment of their system.

It is the position of the Financial Printers Association that the creation of such a single contractor system is unnecessary, except perhaps to solve the SEC budgetary problems in putting together a dissemination process to meet the internally established target dates for full implementation of a mandatory electronic dissemination process. In our view, this would establish a monopolistic entity created by Government which would have an unfair advantage over other businesses which might otherwise provide that service in a freely competitive environment.

In summation, we feel that the SEC's goal to utilize the EDGAR project to solve their internal document processing needs through the application of modern electronic technology is not only appropriate but necessary. We do feel, however, that it would be quite sufficient to simply make all SEC data electronically available to the public.

Those parties who desire to have that data in an electronic form will, if it is important enough for them, be willing to pay the price of accessing it without mandating it as the only available method of meeting disclosure requirements. Those investors who either are happy with the present system, or who cannot afford to pay for the electronically transmitted data, or who choose not to utilize that method, should not be forced to do so at the sacrifice of being adequately informed and should continue to be provided with free printed disclosure information.

Furthermore, for the SEC to select by whatever method a single contractor, and to grant that party exclusive rights over the distribution and dissemination of this information so vital to the financial marketplace of America, strikes us as inappropriate and far beyond the goals envisioned by those wise men who created that superb agency which has served the economic system of America so well.

Thank you, Mr. Chairman, for allowing us to testify.

[The prepared statement of Mr. Cooper follows:]

FPA FINANCIAL PRINTERS ASSOCIATION

A special industry group of Printing Industries of America

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(703) 841-8122

TESTIMONY OF

THE FINANCIAL PRINTERS ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE, AND AGRICLUTURE

ON THE

SEC'S ELECTRONIC DATA GATHERING, ANALYSIS AND RETRIEVAL SYSTEM (EDGAR)

April 29, 1985

For Additional Information Contact:

Benjamin Y. Cooper
Senior Vice President
Government Affairs
(703) 841-8115

Financial Printers Association Statement to the

Subcommittee on Government Information, Justice, and Agriculture

April 29, 1985

Mr. Chairman, members of the Subcommittee, my name is Benjamin Y. Cooper, Senior Vice President for Government Affairs for the Printing Industries of America, Inc. (PIA). PIA is the nation's largest graphic arts trade association representing over 12,000 member companies in the printing and graphic arts industry. I am appearing today on behalf of the Financial Printers Association, a special industry group of PIA. In addition, our statement is being submitted on behalf of the National Association of Printers and Lithographers (NAPL), representing an additional 3,000 companies in the industry. Our statement will focus on the Securities and Exchange Commission's Electronic Data Gathering, Analysis and Retrieval System (EDGAR).

The Financial Printers Association is an association consisting of virtually all of the financial printers in the United States who are responsible for typesetting, printing, filing and distributing most of the financial and reporting documents required to be filed with the SEC and other securities regulatory bodies. The industry sprang up in 1933 in order to enable public corporations to respond to the timely and sometimes complicated filing requirements of the Securities Act of 1933 and subsequent similar legislation and regulations promulgated thereunder. The broad purpose of that legislation was to insure that the investing public received sufficient, accurate, and timely information from those public corporations to enable the investor to make informed decisions with respect to the purchase and sale of securities. Prior to 1933, this was an area subject to little if any regulation. The absence of those disclosure documents was generally felt to have been a substantial contributing factor to the abuses and chaotic conditions existing in the securities marketplace prior to 1933. The point to be emphasized here is that the object of Congress's concern then and now was and should be the interests of the investor — most particularly the small investor who does not have the research and information resources available to the institutional investor.

The concern of the FPA over the development of EDGAR is a obvious one. We are involved in the printing, filing and distribution of printed documents such as the prospectus, which have been to this date the primary vehicle for carrying out the SEC's disclosure mandate. To the extent that the printed document is supplanted by electronically transmitted information, our industry is obviously affected. Nevertheless, we have recognized that in order to survive, we must adapt as an industry and as individual companies to rapidly changing technology. As a matter of fact, virtually every one of the companies in the financial printing industry has converted to computerized typesetting and is capable of electronically transmitting information and documents virtually anywhere in the world. As an industry we have developed "state of the art" sophistication in this area.

When the SEC first proposed the EDGAR system and explained the internal problems they were experiencing in terms of receiving, processing, reviewing, and storing vast amounts of paper filings, we were not only sympathetic, but we extended to them our immediate cooperation to assist in solving problems involving areas where our expertise in the preparing, handling and transmission of information would be immediately helpful and constructive.

In that spirit we have made available to the SEC the total resources of our industry. The FPA and its individual companies have assigned expert personnel and committed millions of dollars of resources in order to assist the SEC in solving its immediate needs. Many of the companies in our industry immediately signed up as volunteers in the SEC's pilot project for EDGAR and have participated in the initial filing stage. In addition, some of our companies have prepared and effected electronic filings on behalf of their customers in the EDGAR pilot program.

Not all of our suggestions and recommendations to the SEC even in the technical areas have been accepted and adopted, but we had not realistically expected that such would be the case. However, we do feel that we have made a significant contribution to the EDGAR project and we feel that the comments we have to submit to the Subcommittee are constructive and trust that they will help all of the parties who will ultimately be affected by EDGAR better understand its direction and ultimate goals, as well as the timeframes for their achievement.

Concerns of the Financial Printers Association are as follows:

Individual Investors

At the present time every investor, particularly the small individual investor, receives at no cost all of the data and information deemed by the SEC to be relevant and necessary for that investor to make an informed investment decision. The vehicle by which this information is made available is a copy of a prospectus and other filed documents. It seems to some observers that the objectives of the SEC's EDGAR project have expanded from the original goal of automating their internal procedures and providing more timely dissemination of information to eventually mandating electronic filing of all documents, and even further to the creation under the SEC auspices of a vast data base containing not only SEC filings but also other financial information. The SEC not only plans to electronically disseminate all of their filed information to the investing public, but also appears to plan the elimination of the printed prospectus and other material as a method of disclosure to the investor.

We see several problems with that approach:

a. Those investors who do not have the availability of a home computer may be denied disclosure by the elimination of the convenient, portable and readily accessible printed prospectus.

b. The small investor will be disadvantaged vis-a-vis the institutional investor who has the resources to afford the latest and most sophicticated computer equipment and software.

c. The small investor who now receives total disclosure at no cost will unquestionably be burdened with some presently unascertainable fee for accessing the disclosure information from the SEC-controlled data bank.

d. The supplantation of the easy to comprehend printed disclosure document with which the individual investor is obviously quite comfortable with a program to impel that investor into the computer age on an unrealistic time schedule seems hardly appropriate to fulfill the SEC's basic responsibilities. The need to eliminate from any electronic system the presently inherent problems of security of information, computer errors and potential for manipulation of data are obvious. Other federal agencies are currently encountering just such problems. After 50 years of dealing with the printed document as a dissemination vehicle for information in the fragile and volatile securities market, the SEC has all but eliminated those problem areas from its present system. The undertaking of such fundamental and basic changes in a disclosure system which was originally designed by Congress perhaps should involve the participation of Congress as well as other parties who will be directly affected.

Dissemination Systems

The present system planned by the SEC for dissemination of filed information and data has been to propose to engage the services of a single vendor who will have the exclusive contractual right to make available and communicate all filed SEC data to investors. Unquestionably, that contractor will have to incorporate in their system some method of charging fees to the investor in order to recover the millions of dollars needed to invest in the establishment and implementation of their system.

It is the position of the Financial Printers Association that the creation of such a single contractor system is unnecessary, except perhaps to solve the SEC budgetary problems in putting together a dissemination process to meet the internally established target dates for full implementation of a mandatory electronic dissemination process. In our view, this would establish a monopolistic entity created by government which would have an unfair advantage over other businesses which might otherwise provide that service in a freely competitive environment.

Summation

In summation, we feel that the SEC's goal to utilize the EDGAR project to solve their internal document processing needs through the application of modern electronic technology is not only appropriate but necessary. We do feel, however, that it would be quite sufficient to simply make all SEC data electronically available to the public. Those parties who desire to have that data in an electronic form will, if it is important enough for them, be willing to pay the price of accessing it without mandating it as the only available method of meeting disclosure requirements. Those investors who either are happy with the present system, or who cannot afford to pay for the electronically transmitted data, or who choose not to utilize that method, should not be forced to do so at the sacrifice of being adequately informed and should continue to be provided with free printed disclosure information.

Furthermore, for the SEC to select by whatever method a single contractor, and to grant that party exclusive rights over the distribution and dissemination of this information so vital to the financial marketplace of America, strikes us as inappropriate and far beyond the goals envisioned by those wise men who created that superb agency which has served the economic system of America so well.

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Mr. ENGLISH. Thank you very much, Mr. Cooper.

Mr. Marx, if you were conducting a market survey for an EDGAR-like project, how would the survey differ from the Mathematica study that was done?

Mr. MARX. Well, one of the things that would, I hope, make my job a lot easier is this preliminary RFP, which the SEC told us today they are planning to issue. I think one of the problems that we have had is just getting sufficient detail about what the system is going to be all about.

In other words, I think what they did with Mathematica was good. The problem is, the people have relied on it to be more than it really was. The more information you have to present to the prospective users, the better your market research is going to be.

I think, no matter what you do, this is not an easy field in which you can do market research. The mix of capabilities in terms of what the user is really buying is difficult to deny. The person is just not buying the piece of information; the person is using software, hardware, and communications capability. So to do market research that is able to separate those things out or get a good feel for the package is quite difficult.

Mr. ENGLISH. What do you think the contractors are going to be getting for the $50 million plus investment?

Mr. MARX. Well, I think it begs the question perhaps to say what he is going to get for his $50 million investment. That is really what costs are involved here, whether he will really bid that remains to be seen.

I am concerned that he won't get much, because I have real questions about what the value of the franchise will be. One of the things we don't want it to be is inside information about how the SEC operates, I guess, which was stated earlier by one of the spokespeople for the SEC. In terms of the marketability of what their franchise is worth, it is a difficult question. But I am not as confident as Chairman Shad that the bulk data franchise is worth $15 to $20 million.

I am concerned that either people won't bid it or, as you suggested, they may be back to you if they have bid it. We will see how many vendors actually do bid.

Mr. ENGLISH. Mr. Cooper, even if the SEC, as Mr. Shad says, won't require printed prospectuses, do you think it is likely that companies will continue to distribute printed prospectuses to investors?

Mr. COOPER. Perhaps in some form. Whether it is printed in the way it is printed now, whether it is printed on demand, it is hard to say.

One of the—speaking now as a concerned individual investor, I think one of the concerns of this is the printed form may be a form of computer printout, somewhat more difficult to read than the current form. One of the aspects of the craft of printing is to use type that is easy to read, pleasant to read, as is done in textbooks for schools. That may not be the situation if the prospectus is limited through an abundance of electronics.

Mr. ENGLISH. How long is the average prospectus?

Mr. **Cooper**. It is difficult to say. Anywhere from roughly 12 pages to a couple of hundred or more. Average would probably be in the range of 24 to 36 pages.

Mr. **English**. If an investor was going to use his home computer to print one out, how long do you think it would take to do that?

Mr. **Cooper**. I can only give practical experience. In trying to find out what goes on in Congress, we use a lot of electronic data bases. I, like most people, don't like to sit in front of a screen and read those things, particularly some of the bills that are introduced. We typically download that material and then print it out and read it.

Some of the systems we have, the cost factor ranges anywhere from as few as $50 an hour to as much as $300 an hour to use that computer time. So it could be a fairly expensive system. And I would, unfortunately, in this case, if it is a couple hundred pages or more—the investor would pretty much have to get it all out.

One of the concerns we have in this is the potential for—or the temptation to edit material down to a stage that does not provide the full data that might otherwise be transmitted, the full text data.

Mr. **English**. Mr. Marx, could you elaborate on the difficulty and expense of developing a market for an information product or service?

Mr. **Marx**. Well, part of that relates to what I was saying earlier. When you start to look at the market, you have to be sure you understand what the company or customer is buying. It is not perhaps the same as doing market research for a new automobile, because there are so many elements involved you have to research. It is not just the piece of data. It is the hardware, the software, and the communications. Training in order to use it is often an issue in this industry because the services are not always so easy to use.

So it takes quite a bit first to understand what your customer needs or what he really thinks he is buying. Second of all, from the point of view of who your competitors are going to be, you have the same type of considerations because there are an awful lot of players that may be coming up with similar capabilities or offering them that you might not think of as traditionally in your business.

Mr. **English**. Are there any cases where we have had "can't miss" services that have gone bankrupt because of the lack of customers?

Mr. **Peyton**. Mr. Chairman, at a conference we sponsored a year ago, we had a session dealing with business failures in the information industry.

One of the leading examples was the IRIS, International Reporting and Information Service, which was attempting to provide services for people interested in international investment opportunities, with respect to foreign political stability, liquidity of foreign banks, and information like that.

There were a number of very prominent people behind the project, including former Prime Minister Heath of Great Britain.

That company did indeed go bankrupt. There was a series of front-page articles in the Washington Post which detailed that particular business failure.

Mr. **English**. Mr. Lightfoot.

Mr. **LIGHTFOOT**. Thank you, Mr. Chairman.

Mr. Cooper, you have mentioned in your prepared statement that your organization had provided some assistance to the SEC in developing their pilot program. What specific recommendations did you make that would benefit your industry?

Mr. **COOPER**. We are still in the process of making recommendations. It is an ongoing project, I think primary in the way in which the data is received, how it is transmitted.

Our companies, since they have the electronic capability now to transmit data, wanted to make sure that the format that we were using was consistent with what the EDGAR project was going to be using. So it is mostly in the technical area to assure that the system we are using is used.

There is already in place quite an elaborate electronic system because of the electronic phototype setting in the industry, to make sure that those things were all compatible. We didn't want a system put in place that ignored existing technology.

Mr. **LIGHTFOOT**. Are you comfortable in the security of the information that goes into that system?

Mr. **COOPER**. It is hard to be comfortable with the security of information that goes into a computer system. Our industry is heavily involved in computing applications to one degree or another.

We have an entire division of the organization devoted to computerization and unrelated to this issue we are advised by our computer people that security isn't foolproof and it is a concern, certainly.

Mr. **ENGLISH**. Thank you.

Mr. Kleczka.

Mr. **KLECZKA**. No questions.

Mr. **ENGLISH**. Mr. Miller.

Mr. **MILLER**. No questions, Mr. Chairman.

Mr. **ENGLISH**. Well, I want to thank you both for your appearance before us today. Your testimony has been very helpful. We appreciate it.

Mr. **PEYTON**. Thank you.

Mr. **ENGLISH**. Congressman Owens is on his way here, so we will be delayed just a minute.

Our next witness will be Hon. Major R. Owens of the House.

We are happy to have you here today.

STATEMENT OF HON. MAJOR R. OWENS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. **OWENS**. Thank you, Mr. Chairman.

Mr. **ENGLISH**. I might say, without objection, if you care to summarize your testimony, your full and complete written text will be made part of the record.

Mr. **OWENS**. Yes, thank you very much.

I would like to submit a full written statement at a later date with supporting documentation, if possible.

Mr. **ENGLISH**. Without objection, so ordered.

[Mr. Owens, written statement follows his oral testimony.]

Mr. **OWENS**. I see that the committee, despite unprecedented activities of the day, is moving faster than I expected it to. Otherwise

I would have been here on time. Thank you very much for waiting for me.

Let me begin by thanking the chairman and the members of the subcommittee for holding these hearings.

I think the matters under consideration today have far reaching consequences for most of the operations of the Federal Government and for the effective, efficient and accountable functioning of American democracy in general.

Both of the topics discussed today involve policy, practice, and procedures which will impact on the information function at every level within our society.

We are already well into the age of information and we should not allow ourselves to be casually misled through the complexity of this age by cost accountants.

The question of the electronic collection and dissemination of information is very much interwoven with the broader questions of information policy outlined in the draft OMB circular entitled "Management of Federal Resources." The format of the information is a key determinant of the access to the information.

What we must emphasize at the outset is that these questions of format, questions about the appropriateness of content, and questions concerning the extent of dissemination, these are all questions which go beyond the scope of mere cost cutting and economizing.

In the name of budget reform, the Office of Management and Budget has assumed powers which ought to be delegated to a different kind of entity, an entity which is structured to meet the full range of complex issues involved in this task.

Before such restrictive policies are implemented, there must be broader, more deliberative review of the Federal information policies by a cross section of nonpartisan experts who fully understand the age of information. Among these experts, there should be representatives chosen by the American Library Association.

What information do American citizens need from their Government in this age of information? How do we supply all citizens with that kind of information? And in the most convenient formats at the lowest possible cost?

With respect to information generated by the Federal Government, how do we maximize the advantages and opportunities provided to our citizens by such information? How do we maximize advantages to educators and scholars? How will American businesses be assisted as they struggle to meet competition in the international marketplace?

It is already clear that certain of our foreign competitors are being provided indirect subsidies by their governments through the assumption of important information and research costs by the government.

Even in the area of national defense and security, there are negative consequences generated each time we shut down a nondefense related Federal library information activity.

This latest draft OMB circular, is unfortunately only one component of a larger Reagan administration attack on the information activities of the Federal Government.

The OMB has ordered the accounting out of libraries within the executive branch. The Office of Personnel Management has begun a reclassification of librarian and positions within the Federal Government which downgrades professional librarians.

It should be noted that while this Neanderthal approach to libraries and librarians within the Federal Government is taking place, private industry is moving in exactly the opposite direction. Libraries within the export structures are receiving more attention and higher budgets and librarians are being upgraded and given new titles such as data base administrators.

This draft circular on the management of Federal information resources is designed to complete the task of providing less information and more controls by the executive branch.

The American Library Association booklet entitled "Less Access to Less Information By and About the United States Government" provides a chronology of the hostile actions of this administration against information units and systems which should be actually encouraging and seeking to maximize the services, information services to the American people.

OMB claims to derive its authority from the Paperwork Reduction Act of 1980. And yet, the thrust of that act was to do just the opposite. The thrust of that act was to relieve the burden of supplying information to the Government from the people, of having people of all kinds who have to deal with the Government fill out unnecessary forms and spend unnecessary amounts of time and energy providing information to the Government.

The act was not intended to curb the access to information generated by the Government.

This same Paperwork Reduction Act also requires that triennial reviews must be conducted to review the information resources management activities of each agency to ascertain their adequacy and efficiency.

Such a 3-year review process sounds appropriately deliberative and it is the kind of reasonable deliberative approach that one would argue for.

It appears from what we read in the paper that some one person or group of persons are making these decisions about which publications shall survive and which shall be discarded. I am glad to hear there is a 3-year review process that is required, but it must be reasonable.

However, it is at this point that the need for an objective criteria surfaces again. What criteria will be used and who will apply the criteria? Which bureaucrat has the final decisionmaking powers and can stop the publication of a periodical or annual review?

I read in the paper that the spokesman for OMB says that the activities of the Census Bureau will not be touched.

The activities of the Bureau of Labor Statistics will not be touched. This I would like to see in writing.

I don't know where the guarantees are, because I understand the monthly Labor Review has been told it will become a quarterly instead of a monthly publication and certain other kinds of publications within the Labor Department have been halted already.

Who decides what shall be placed in the electronic data bases? Who decides what shall be provided electronic format as well as print format? What is the title of the person in the General Services Administration who will execute these awesome responsibilities?

If you read the OMB draft circular, you will find that the authority to carry out this act, this regulatory function, really resides in GSA.

What is the title of the person within GSA who will execute these awesome responsibilities? What are the qualifications of this employee? Who will be the information czar of America, the grand censor of the Federal Government?

I think the qualification and the position of that person and the kind of staff they have and the kinds of processes and procedures they go through should be very important to all of us. This is just one of the numerous questions which must be answered before we go forward with the development of implementation of a circular.

We are about to make a monumental change in the way our modern democracy operates. OMB should be blocked in its attempt to disguise this change as a mere bookkeeping operation.

Instead of this process going forward in OMB via the proposed circular, it should be halted and there should be an emergency commission on Federal information appointed or some such body. Such a nonpartisan broad-based commission could examine the full implications of every proposed action and utilize the expertise of its members to objectively develop policies and practices which truly meet the needs of the American people in this age of information.

I thank the committee for allowing me to testify.

Mr. ENGLISH. Thank you, Major. That is a very fine statement.

[The prepared statement of Mr. Owens follows:]

STATEMENT OF CONGRESSMAN MAJOR R. OWENS BEFORE THE GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE SUBCOMMITTEE OF THE HOUSE GOVERNMENT OPERATIONS COMMITTEE

Let me begin by thanking the Chairman and members of this very important Sub-Committee for holding these hearings. The matter under consideration today have far-reaching consequences for most of the operations of the federal government and for the effective, efficient, and accountable functioning of the American democracy in general. Both of the topics discussed today involve policies, practices and procedures which will impact on the information function at every level within our society. We are already well into the age of information and we should not allow ourselves to be casually misled through the complexities of this age by cost accountants. The question of the electronic collection and dissemination of information is very much interwoven with the broader questions of information policy outlined in the Draft OMB Circular entitled Management of Federal Information Resources. The format of the information is a key determinant of the access to the information.

What we must emphasize at the outset is that these questions of format, questions about the appropriateness of content and questions concerning the extent of dissemination; these are all questions which go beyond the scope of mere cost-cutting and economizing. In the name of budget reform, the Office of Management and Budget has assumed powers which ought to be delegated to a different kind of entity structured to meet the full range of complexities of this task. Before such restrictive policies are implemented there must be a broader, more deliberative review of the federal information policies by a cross section of non-partisan experts who fully understand the age of information. Among these experts there should be representatives chosen by the American Library Association.

What information do American citizens need from their government in this age of information? How do we supply all citizens with such information in the most convenient formats at the lowest possible costs? With respect to information generated by the federal government, how do we maximize the advantages and opportunities provided by such information? How do we maximize advantages to educators and scholars? How will American businesses be assisted as they struggle to meet competition in the international market-place? It is clear that already certain of our foreign competitors are being provided indirect subsidies by their governments through the assumption of important information and research costs by the government. Even in the area of national defense and security there are negative consequences generated each time we shut down a non-defense related federal library or information activity.

This latest Draft OMB Circular is unfortunately only one component of a larger Reagan Administration attack on the information activities of the federal government. The OMB has ordered the contracting out of libraries within the executive branch. The Office of Personnel Management has begun a reclassification of librarian positions within the federal government which downgrades professional libratians. It should be noted that while this neanderthal appraoch to libraries and librarians within the federal government is taking place, private industry is moving in exactly the opposit direction. Libraries within the corporate structures are receiving more attention and higher budgets and librarians are being upgraded and given new titles such as Data Base Administrators.

This draft circular on the Management of Federal Information Resources is designed to complete the task of providing less information and more controls by the executive branch. An American Library Association booklet entitled Less Access To Less Information By And About The U.S. Government provides a chronology of the hostile actions of this administration against information units and systems which should be encouraged to maximize their services to the American people.

OMB claims to derive its authority from the Paperwork Reduction Act of 1980 and yet the thrust of that act was to relieve the burden of supplying information to the government from the people. The act was not intended to curb the access to information generated by the government. This same Paperwork Reduction Act requires that "triennial reviews" must be conducted to review the Information Resources Management activities of each agency to ascertain their adequacies and efficiency. Such a three year review process should be appropriately deliberative; however, it is at this point that the need for objective criteria surfaces again. What criteria will be used and who will apply the criteria? Which bureaucrat has the final decision to stop the publication of a perodical or annual report? Who decides what shall be placed in the electronic data-bases? What is the title of the person in the General Services Administration who will execute these awesome responsibilities? What are the qualifications of this employee? Who will be the Information Czar of America, the Grand Censor for the Federal Government?

This is just one more of the numerous questions which must be answered before we go forward with the implementation of this circular. We are about to make a monumental change in the way our modern democracy operates. OMB should be blocked in its attempt to disguise this change as a mere bookkeeping operation. Instead of this process going forward via the Draft OMB Circular, it should be halted and there should be an Emergency Commission on Federal Information appointed. Such a non-partisan, broad based Commission could examine the full implications of every proposed action and utilize the expertise of its members to objectively develop policies and practices which truly meet the needs of the American people in this age of information.

STATEMENT OF CONGRESSMAN MAJOR R. OWENS BEFORE THE GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE SUBCOMMITTEE OF THE HOUSE GOVERNMENT OPERATIONS COMMITTEE
(continued)

PAPERWORK REDUCTION ACT

44 U.S.C. § 3501. Purpose ,

The purpose of this chapter is ---

(1) to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons;

(2) to minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information;

(3) to maximize the usefulness of information collected by the Federal Government;

(4) to coordinate, integrate and, to the extent practicable and appropriate, make uniform Federal information policies and practices;

(5) to ensure that automatic data processing and telecommunications technologies are acquired and used by he Federal Government in a manner which improves service delivery and program management, increases productivity, reduces waste and fraud, and, wherever practicable and appropriate, reduces the information processing burden for the Federal Government and for persons who provide information to the Federal Government; and

(6) to ensure that the collection, maintenance, use and dissemination of information by the Federal Government is consistent with applicable laws relating to confidentiality, including section 552a of title 5, United States Code, known as the Privacy Act.

Added Pub. L. 96-511, §2(a), Dec. 11, 1980, 94 Stat. 2812.

"DECLARATION OF PURPOSE"

"Section 1. (a) The Congress hereby finds that Federal information reporting requirements have placed an unprecedented paperwork burden upon private citizens, recipients of Federal assistance, businesses, governmental contractors, and State and local governments.

"(b) The Congress hereby affirms that it is the policy of the Federal Government to minimize the information reporting burden, consistent with its needs for information to set policy and operate its lawful programs.

"(c) The Congress hereby determines that a renewed effort is required to assure that this policy is fully implemented and that it is necessary to reexamine the policies and procedures of the Federal Government which have an impact on the paperwork burden for the purpose of ascertaining what changes are necessary and desirable in its information policies and practices.

LESS ACCESS TO LESS INFORMATION BY AND ABOUT THE U.S. GOVERNMENT

A 1981-84 Chronology: April 1981 - December 1984

What was first seen as an emerging trend in April 1981 when the American Library Association Washington Office first started this chronology of items which came to our attention, has by December 1984 become a continuing pattern of the federal government to restrict government publications and information dissemination activities. A policy has emerged which is less than sympathetic to the principles of freedom of access to information as librarians advocate them. A combination of specific policy decisions, the current Administration's interpretations and implementation of the 1980 Paperwork Reduction Act (PL 96-511), implementation of the Grace Commission recommendations and agency budget cuts significantly limit access to public documents and statistics.

The accelerating tendency of federal agencies to use computer and telecommunications technologies for data collection, storage, retrieval and dissemination has major implications for public access. To identify a few: contractual arrangements with commercial firms to disseminate information collected at taxpayer expense, increased user charges for government information, the trend toward having increasing amounts of government information available in electronic format only and eliminating the printed version. While automation clearly offers promises of savings, will public access to government information be further restricted for people who cannot afford computers or cannot pay for computer time?

ALA reaffirmed its long standing conviction that open government is vital to a democracy in a resolution passed by Council in January 1984 which stated that "there should be equal and ready access to data collected, compiled, produced, and published in any format by the government of the United States." In his inaugural speech, ALA President E.J. Josey asserted: "Again, nobody would deny the utility of many of these services provided by the private sector, but are not available to all of the American people; their purpose is to yield a profit, and they are designed only for those who can pay for them. Nor do they have any obligation to provide access to all or any information; only that information which the suppliers deem profitable or potentially so. Only the preservation of public services, publicly supported, can assure that each individual has equal and ready access to information, ..."

With access to information a major ALA priority, members should be concerned about the following series of actions which create a climate in which government information activities are suspect. The April 1981 through June 1984 items are a compilation of four previous chronologies prepared on the same topic; the July to December 1984 items are an update.

American Library Association
Washington Office
December 1984

April 1981	President Reagan imposed a moratorium on the production and procurement of new audiovisual aids and government publications using the rationale that the federal government is spending too much money on public relations, publicity, and advertising. "Much of this waste consists of unnecessary and expensive films, magazines, and pamphlets." (Weekly Compilation of Presidential Documents, April 27, 1981)
April 1981	The Office of Management and Budget (OMB) issued Bulletin No. 81-16 which provided procedures and guidelines for the moratorium. All agencies were required to review and reduce planned or proposed publications and to develop a management control plan to curtail future spending on periodicals, pamphlets and audiovisual materials.
June 1981	OMB issued a model control plan to assist agencies in developing new or improved control systems to carry out the policies and guidelines in Bulletin No. 81-16, "Elimination of Wasteful Spending on Government Periodicals, Pamphlets, and Audiovisual Products."
June 1981	OMB Bulletin 81-21 required each federal agency to submit its plan for reviewing its information activities by September 1, 1981. The objective was to establish a process "...which forces agencies to focus on and allows us (OMB) to influence decisions on how they process, maintain, and disseminate information." Bulletin No. 81-21 also required the designation of the single official in each federal agency in the executive branch who will be responsible for information resources management as required by the Paperwork Reduction Act of 1980.
September 1981	David Stockman, Director of OMB, issued Memorandum 81-14, requiring heads of executive departments and agencies to pay special attention to the major information centers operated or sponsored by their agency. Among the types of information centers to be evaluated are clearinghouses, information analysis centers and resource centers. Evaluation criteria included these questions: Could the private sector provide the same or similar information services? Is the information service provided on a full-cost recovery basis?
October 1981	OMB Bulletin 81-16, Supplement No. 1, required agency review of all existing periodicals and recurring pamphlets to reevaluate their necessity and cost-effectiveness using OMB-approved control systems. Agencies must submit a new request for all series to be continued after January 15, 1982.
October 1981	Public Printer Danford Sawyer, Jr. proposed to close all Government Printing Office bookstores outside of Washington, D.C. plus a few Washington locations. Approximately 24 of the 27 GPO bookstores would be closed, because, it is claimed, they compete with the private sector and are losing money. (Letter to Sen. Mathias, Chairman of the Joint Committee on Printing, Oct. 9, 1981)

October 1981	The Justice Department submitted to Congress the Administration's proposal to severely limit the applicability of the Freedom of Information Act. (Washington Post, November 28, 1981)
November 1981	According to the Washington Post (November 9, 1981) over 900 government publications have been or will be eliminated and the government claims that millions of dollars will be saved as a result.
November 1981	The Washington Post (November 20, 1981) also reported that the Commerce Department was considering replacing the National Technical Information Service with contracts to private firms. NTIS indexes and distributes at cost thousands of federally funded technical reports and research studies.
November 1981	One example of a discontinued publication is the Securities and Exchange Commission News Digest, hardly an ephemeral public relations piece. The SEC will continue to print it for internal use, but will no longer offer subscriptions or make it available for depository library distribution. Instead, a private firm will publish it at a 50 percent increase in price (from $100 to $150 per year). (Security and Exchange Commission News Digest, November 10, 1981)
December 1981	Citing budget cuts, the National Archives discontinued the interlibrary loan of microfilm publications from the Fort Worth Federal Archives and Records Center. About 400,000 reels of census, diplomatic, pension and other records used heavily by genealogists were lent to libraries annually. (Letter sent from the National Archives to "All Librarians", November 30, 1981) [Note: In July 1983, NARS began a rental program for census microfilm through a contractor.]
January 1982	The free Government Printing Office pamphlet Selected U.S. Government Publications used for years to alert readers to new general interest and consumer oriented government documents will no longer be mailed to the public because GPO says it is too expensive to mail out every month. GPO suggests that readers subscribe to the comprehensive bibliography the Monthly Catalog of U.S. Government Publications which costs $90 a year. (Washington Post, January 22)
February 1982	The President's FY 1983 budget requested zero funding for the Library Services and Construction Act: Titles II A, B and C of the Higher Education Act which provide funds for college library resources, research and training programs and research libraries; and the National Commission on Libraries and Information Science. Less money was proposed for the state block grant which contains funding for school library resources and for the U.S. Postal Service subsidy which supports the fourth class library rate and other nonprofit mailing rates. (Office of Management and Budget, Budget of the U.S. Government FY 1983)

March 1982	A 300 percent increase in the cost of an annual subscription to the *Federal Register* — from $75 to $300 — went into effect. (February 25 *Federal Register*, p. 8151). In 1981, the price of a year's subscription to the *Congressional Record* increased from $75 to $208. Sen. Charles Mathias (R-MD) stated that circulation of the *CR* declined almost 20 percent in the last three years as the price increased (*New York Times*, June 2)
March 1982	Many publications formerly distributed free are now available only for a fee and government agencies are urged by OMB to start charging prices high enough to recover their costs. For example, because of budget cuts, Agriculture Departments Economic Research Service will stop free distribution of its publications and make these reports available only on a paid subscription basis. The alternative was to curtail basic research activities. (March 29 *FR*, p. 13178)
March 1982	A reference collection standby, the *Dictionary of Occupational Titles*, is threatened because 87 of the 97 jobs remaining in the Labor Department's occupational analysis division are being eliminated. (*Washington Post*, March 2)
April 1982	The President signed Executive Order 12356, National Security Information, which substantially increases the amount of information that can be classified. (April 6, *FR*, pp. 14873-14884). Critics see the Executive Order as a reversal of a 30-year government policy of automatic declassification of government documents. Although the National Archives still has the authority to review classified documents, budget cuts are likely to limit the ability of Archives to carry out this function effectively. (*Chronicle of Higher Education*, April 14)
May 1982	The Administration supports Senate amendments to the Freedom of Information Act to restrict the type and amount of government material available to the public. (*Washington Post*, May 4).
May 1982	The government's two biggest collectors of statistics, the Census Bureau and the Bureau of Labor Statistics, have cut programs because of budget reductions. The Census Bureau has dropped numerous studies and the Bureau of Labor Statistics has asked Congress for an emergency $5.6 million appropriation "to maintain the accuracy" of such key economic indicators as the Consumer Price Index. According to a May 4 *Washington Post* article, "Many of the programs being trimmed helped the government monitor how its programs were being used. Others helped policy makers predict economic trends." The article also quoted a business leader testifying at a congressional subcommittee hearing in March: "A million dollars saved today through short-sighted reductions in the budgets for statistical programs could lead to erroneous decisions that would cost the private and public sectors billions of dollars over the long run."
May 1982	The Office of Management and Budget has agreed to make available a complete list of discontinued government publications as a way

	"...to assure an orderly and equitable transfer of discontinued government publications to the private sector." The list, which should be available in mid-July, can be obtained from OMB's Bill McQuaid (202/395-5193). (Association of American Publishers Capital Letter, May)
May 1982	In April, the General Services Administration closed the Washington, D.C. Federal Information Center, leaving the 40 information centers in other parts of the country still operating. However, citing budget cuts, walk-in services have now been eliminated, leaving only the telephone numbers and people to answer them. A saving of $260,000 of the centers' $4 million annual budget is anticipated. (Washington Post, May 25)
May 1982	The New York Times (May 10) reported that GPO destroyed $11 million worth of government publications that were not selling more than 50 copies a year or earning more than $1,000 in sales a year. The millions of documents were sold as wastepaper for $760,000. Although a few copies of most titles have been kept in stock, generally people looking for one of the destroyed publications will be told to find it in one of the depository libraries.
June 1982	In keeping with its policy to refuse to offer for public sale anything that won't yield $1,000 a year in sales, GPO has selected only 25 of the 69 publications which the National Bureau of Standards wanted to offer for public sale. As a result, the rejected publications are available to the public only through the National Technical Information Service whose prices for NBS publications are generally two to three times higher than GPO's for the same document. (Memo from NBS official, June 14)
June 1982	Continued cutbacks on free publications result in the Health and Human Services Department no longer distributing copies of Infant Care without charge as it has for 58 years. (New York Times, June 2)
June 1982	The Office of Management and Budget permited federal agencies to begin putting out new publications and films, but OMB will keep a close eye on costs and top agency officials will monitor content. According to a preliminary count, the Administration has eliminated about 2,000 of the 13,000 to 15,000 publications distributed before the President's April 1981 moratorium on government books, periodicals and audiovisuals. (Washington Post, June 11)
September 1982	In response to a September 8 Federal Register (pp. 39515-39530) notice by the Office of Management and Budget (OMB) regarding proposed regulations for the information collection provisions of the Paperwork Reduction Act of 1980, Washington Office Director Eileen Cooke sent OMB the resolution on federal government statistical activities passed by Council at the 1982 annual conference. Her letter sent with the resolution expressed ALA's concern with the assumption throughout the proposed regulations that federal government data collection is a burden on the public, with little recognition given to the benefits to the public which are derived

from accurate, nonbiased and timely statistics. She stressed that the Association would like to see more safeguards for public access in the regulations.

October 1982 On October 6, 1982, OMB released a list of more than 2,000 government publications -- one out of every six -- targeted for termination or consolidation into other publications. This initiative, together with 4,500 other cost reductions proposed for an additional 2,300 publications, is expected to produce cost savings "of more than one-third of all federal publications." According to OMB 82-25, "Reform '88: Elimination, Consolidation and Cost Reduction of Government Publications," sixteen percent of all government publications will be discontinued. This amounts to 70 million copies, 1/12 of the 850 million copies printed, and is part of "...the Reagan Administration's continuing drive to eliminate costly, redundant and superfluous publications..." Each federal agency will be reviewing its publications for increased user fees. Similar savings are expected during 1983 to 1985.

January 1983 OMB published the draft of the revision of its Circular A-76 "Performance of Commercial Activities" in the January 12 Federal Register, pp. 1376-1379. Library services and facility operation and cataloging were listed as examples of commercial activities. The supplement to the circular sets forth procedures for determining whether commercial activities should be operated under contract with private sources or in-house using government facilities and personnel. (ALA's Federal Librarians Round Table recommended many changes in the draft circular to OMB.)

January 1983 OMB proposed amendments to its Circular A-122, "Cost Principles for Nonprofit Organizations," in the January 24 Federal Register, pp. 3348-3351. The proposal "...would have had the apparent effect of severely restricting or inhibiting an organization from engaging in protected first amendment rights with its own private assets as a condition for receiving the benefits of any federal contract or grant, unless the organization could duplicate all its facilities, equipment and personnel." ("Legal Analysis of OMB Circular A-122: Lobbying by Non-Profit Grantees of the Federal Government," Congressional Research Service, Library of Congress, December 15, 1983, p. CRS-2). The proposal was withdrawn in March after substantial congressional and public criticism. (Chronicle of Higher Education, March 9, 1983)

February 1983 In a February 18 speech to the Conservative Political Action Conference, President Reagan cited "...reducing publication of more than 70 million copies of wasteful or unnecessary government publications" as one of the ways that his Administration is attempting to make government more efficient. (Weekly Compilation of Presidential Documents, February 23, 1983, p. 260)

March 1983 Stating that additional safeguards are needed to protect classified information, the President issued a directive on safeguarding national security information on March 11. The directive mandates greater use of polygraph examinations in investigations of leaks of classified information and requires all individuals with access to certain types of classified information to sign a lifelong prepublication review agreement to submit for governmental review all writings and proposed speeches which touch upon intelligence matters. As directed by ALA Council in a resolution passed at the 1983 Annual Conference, ALA Executive Director Robert Wedgeworth wrote to the President and requested that The Presidential Directive on Safeguarding National Security Information be rescinded. In December, Congress added an amendment to the Department of State Authorizations (PL 98-164) prohibiting implementation of the directive until April 15, 1984.

April 1983 The Department of Energy proposed regulations in the April 1 Federal Register, pp. 13988-13993, to "...describe those types of Unclassified Controlled Nuclear Information (UCNI) to be protected, establish minimum protection standards, set forth the conditions under which access to UCNI would be granted, and establish procedures for the imposition of penalties for violation of those regulations." Although libraries were not mentioned in the proposal, the scope of the documentation and information potentially covered raised concern about access to information on nuclear research in libraries which are depositories of Department of Energy nuclear materials.

August 1983 At a public hearing at the Department of Energy on August 16, Sandra Peterson, chair of the Government Documents Round Table, testifying on behalf of ALA, concluded that the proposed DOE regulations issued in April about Unclassified Controlled Nuclear Information should be withdrawn and reevaluated. At the hearing, a DOE official recognized the concerns of academic and research institutions about the effect of the proposed rule on their libraries. Two possible solutions were suggested: 1) expressly exempt from the rule nongovernmental libraries whether operated by government contractor or not; and 2) limit the responsibility of nongovernment libraries to the protection of documents or materials specifically identified by title, if possible, to the library by DOE in writing. In an October letter to DOE on behalf of ALA, Peterson rejected both approaches as impossible and impractical. DOE plans to issue a revised proposal in January 1984 in the Federal Register for an additional public comment period.

August 1983 OMB issued the revision of its Circular A-76 (see January) in the August 16 Federal Register, pp. 37110-37116. The impact of this circular extends to all libraries which depend on or have a service relationship with federal libraries. A contract for total library operations of the Department of Energy library was awarded to a private sector firm in August, for the Department of Housing and Urban Development in September.

September 1983 In the September 12 Federal Register, pp. 40964-40965, OMB solicited public comment on the development of a policy circular on federal information management as part of its responsibility to implement the Paperwork Reduction Act of 1980 (PL 96-511). The only underlying principle mentioned by OMB was that "...information is not a free good but a resource of substantial economic value...." The ALA response stressed that "To participate fully in a democratic society, citizens must be informed and aware, regardless of their individual ability to pay for information." Indications are that OMB will try to establish user fees in order to recover the government's full costs of creating as well as providing information, and will try to define what constitutes unfair competition with the private sector as it relates to information issues and library operations. OMB plans to issue a proposed circular for public comment in the Federal Register in February 1984.

October 1983	In contrast to other policies which restrict public access to government information, the U.S. Government Printing Office launched a national campaign to increase public awareness and use of federal depository libraries. The campaign uses public service announcements with the theme "Contact your local library" on television, radio and in print to guide the audience to all libraries, the 1,375 depositories and other non-depositories.
November 1983	OMB issued a watered down version of its January revisions to Circular A-122: "Cost Principles for Nonprofit Organizations; Lobbying and Related Activities" in the November 3 Federal Register, pp. 50860-50874. In a December 19 letter, ALA urged OMB to clarify ambiguous language in the proposal and reaffirmed the Association's commitment to the principle that open government is vital to a democracy. OMB has extended their previous mid-December comment deadline to January 18, 1984. ALA chapters and state library associations may want to further analyze the OMB proposal to see if it would affect their organization's lobbying and related activities.
November 1983	The House passed HR 2718, Paperwork Reduction Act Amendments of 1983. The bill establishes new goals for further reduction of the burden imposed by federal paperwork requirements. Federal collection of information would be reduced by 10 percent by October 1, 1984, and by an additional 5 percent by October 1, 1985. The House bill would explicitly prohibit use of funds for functions or activities not specifically authorized or required by the Paperwork Reduction Act. (November 7 Congressional Record, pp. H9271-9273)
December 1983	In a December 12 letter to Rep. Augustus F. Hawkins (D-CA), Chair of the Joint Committee on Printing, OMB Director David Stockman, protested the stipulation in the proposed JCP Government Printing, Binding and Distribution Regulations that the Government Printing Office would be responsible for the distribution of all government publications. In her letter commenting on the proposed regulations, ALA Washington Office Director Eileen D. Cooke commended the JCP for its development of regulations which provide for technological changes and for increased support for the depository library program. Cooke said: "The expanded definition

of printing is extremely important for the continued effective operation of the depository library program. An increasing number of government agencies are creating information which is only available for distribution in an electronic format. In order for libraries, specifically depository libraries, to be able to provide information in this format to the general public, it must become a part of the depository library program." The proposed JCP regulations were printed in the November 11 Congressional Record, pp. H9709-9713.

December 1983 — On December 28, 1983, the United States Government gave the required one-year notice of its intention to withdraw from the United Nations Educational, Scientific, and Cultural Organization (UNESCO) effective January 1, 1985. (Press release #98-158, "House Hearings on U.S. Participation in UNESCO," Committee on Science and Technology, U.S. House of Representatives, March 8, 1984)

NOTE: ALA Council passed a resolution in January 1984 on continued U.S. membership in UNESCO. Thomas Galvin, Chair of ALA's International Relations Committee, testified in Congress on March 15, 1984 and urged the U.S. to stay in UNESCO and continue to allow U.S. scientists "full, prompt, and ready access to...research results of their counterparts...throughout the world."

January 1984 — The Second Annual Report on Eliminations, Consolidations, and Cost Reductions of Government Publications reports the elimination of 3,287 publications and the proposed consolidation of another 561. The total of eliminations and consolidations equals 3,848 publications or one-fourth of the total inventory. These publications account for over 150 million copies, or 15 percent of all copies printed. In addition, federal agencies proposed 5,020 cost-reduction actions on 3,070 other publications including reducing the volume, frequency of issue, use of color, and other printing and distribution cost reductions. Meanwhile, the Office of Management and Budget is revising OMB Circular A-3, the permanent procedure for the government-wide review of publications. When the circular is revised, OMB plans to establish new publication elimination and cost reduction goals for the remaining 9,000 publications in the government inventory of 15,900 publications. (Office of Management and Budget, Second Annual Report on Eliminations, Consolidations, and Cost Reductions of Government Publications, released on January 6, 1984.

January 1984 — A photograph in the Washington Post showed Presidential counselor Edwin Meese III and OMB Deputy Director Joseph Wright surrounded by trash bags stuffed with government documents at a White House briefing. The accompanying story said:

> Since President Reagan took office three years ago, the administration has eliminated one of every four government publications then printed. Most of them were distributed free to the public by the Agriculture and Defense departments.
>
> Meese ridiculed the publications, calling a pamphlet entitled "How to Control Bedbugs," for example, a real "bestseller." But the doomed publications included several offering advice about serious subjects, such as solar energy, radioactive fallout, income taxes and drug abuse. Meese said those publications are being eliminated because the information is available elsewhere. Eliminating the publications will save $85 million annually.... (Pete Earley, "U.S. Tightens Tourniquet on Flow of Paper," Washington Post, January 7, 1984, p. A5)

February 1984 For the third year in a row the Administration proposed elimination of library grant programs. Education Department justification for the zeroes indicated no new rationale, but once again noted "the program's past success at establishing the highest practical levels of access across the country to library services...and at developing models of interlibrary cooperative arrangements to stimulate further expansion of the concept." In addition, "any further need for training of professional librarians can be met through State and local efforts as well as student aid programs." In the past years, Congress has continued to fund library grant programs, in some cases, at the highest-ever levels. (Department of Education, The Fiscal Year 1985 Budget, released February 1, 1984)

February 1984 The Administration's FY 1985 budget request for the Consumer Information Center is $349,000, a million dollars less than the FY 1984 appropriation. The budget proposes that one-half of CIC's staff be redirected from traditional consumer information activities to undertake new marketing programs financed from increased user fees and other charges. The CIC's function is to promote greater public awareness of existing federal publications through distribution of the quarterly "Consumer Information Catalog" and various media programs.

In May, when the House Appropriations Committee recommended $1,149,000 in new budget authority for the CIC in FY 1985, it expressed concern that the recent user charge increase has substantially reduced consumer demand for publications, with the result that lower volume has raised unit distribution costs. Therefore, the committee directed that the charge to consumers not be raised above its current level of $1 and that the CIC charge other federal agencies only the actual cost of distributing publications. (H. Rept. 98-803 on the Department of Housing and Urban Development-Independent Agencies Appropriation Bill, 1985; May 23, 1984, p. 34)

February 1984

The Administration requested for FY 1985 only $452 million of the $801 million needed to keep nonprofit and other subsidized postal rates at current levels. Under the President's proposal, a 2-lb. book package mailed at the fourth-class library rate would increase from the current 47¢ to 66¢, a 40 percent increase. However, the House Treasury-Postal Service-General Government Appropriations Subcommittee, chaired by Rep. Edward Roybal (D-CA), recommended $801 million, the full amount needed. The full House Appropriations Committee approved that recommendation June 7 in HR 5798; the Senate subcommittee has not yet acted. (House Treasury, Postal Service and General Government Appropriations Bill, 1985 (H. Rept. 98-830))

February 1984

Following the Administration's request for substantial revisions to the Freedom of Information Act, the Senate passed S. 774 amending the FOIA. The bill would provide increased confidentiality for certain law enforcement, private business, and sensitive personal records. It promotes uniform fee schedules among agencies which could recover reasonable processing costs in addition to the current search and copying costs, and could keep half the fees to offset costs. The public interest fee waiver would be clarified. Many of the substantive and procedural changes proposed by the Senate to the FOIA are controversial. Rep. Glenn English (D-OK), Chair of the House Government Operations Subcommittee on Government Information, Justice, and Agriculture, has indicated that the Subcommittee "must proceed very carefully and thoughtfully in considering amendments." (February 27 Congressional Record, pp. S1794-1822, and "Statement of Rep. Glenn English on the Passage by the Senate of Freedom of Information Act Amendments," News Release from the House Committee on Government Operations, February 28, 1984)

February 1984

The Department of Agriculture announced that it will issue a Request for Proposal (RFP 84-00-R-6) on March 15, seeking contractors to provide a computer-based system to support electronic dissemination of "perishable" data developed by USDA agencies. (February 28, 1984, Commerce Business Daily). Examples of the type of data to be disseminated in the system include: Market News Reports from Agricultural Marketing Service, Outlook and Situation Reports from Economic Research Service, Weekly Export Sales Reports from Foreign Agricultural Service, USDA press releases and crop production reports from Statistical Reporting Services. Users will pay for the direct cost of accessing the data from the computer-based system. However, USDA does not plan to exert control over the fees which contractors or subcontractors will charge the public to access the on-line data.

The Office of Management and Budget considers this RFP a prototype for the federal government's distribution of electronic data.

The Patent and Trademark Office has signed agreements with private companies for the automation of agency records at no cost to the government. One aspect of these agreements requires the agency to deny Freedom of Information Act requests for the records in automated form. In a statement in the March 14 Congressional Record (pp. H1614-1615), Rep. Glenn English (D-OK) asked: Is the agency obtaining services at the price of limiting public access to some of its records? The Securities and Exchange Commission has issued a request for proposals for a pilot test of an electronic filing, processing, and dissemination system. The Federal Maritime Commission is also considering an electronic filing, storage, and retrieval system for tariffs.

March 1984 On March 15, Sen. John Danforth (R-MO) introduced S. 2433, the Senate version of the Paperwork Reduction Act Amendments of 1984. The Senate bill would require reducing the paperwork burden by 5 percent in each of the next five fiscal years, beginning in FY 1984. (March 15 Congressional Record, pp. S2789-2793)

April 1984 OMB published the third and final version of its controversial "Lobbying" revision of Circular A-122, "Cost Principles for Nonprofit Organizations" in the April 27 Federal Register, pp. 18260-77. The revision which is scheduled to go into effect on May 29, 1984, makes unallowable the use of federal funds for the costs associated with most kinds of lobbying and political activities, but does not restrict lobbying or political activities paid for with non-federal funds. The new version is still drawing fire from some groups and from Members of Congress who contend that the bookkeeping requirement would require contractors and grantees to tell the government how much they spend on lobbying and identify those costs separately from other expenses. (Washington Post, April 30, 1984)

April 1984 The Justice Department concluded in an April 11, 1984 memorandum for the Counsel to the Director of the Office of Management and Budget that the proposed regulations published by the Joint Committee on Printing in November 1983 "...are statutorily unsupported and constitutionally impermissible." (Memorandum for Michael J. Horowitz, Counsel to the Director, Office of Management and Budget. Re: Constitutionality of Proposed Regulations of Joint Committee on Printing under Buckley v. Valeo and INS v. Chadha, April 11, 1984)

May 1984 When the National Farmers Union recently asked for a listing of payment-in-kind (PIK) participants and amounts of the PIK commodities they received, the U.S. Department of Agriculture responded that a printout would cost $2,284.87, with half of the money required up front. (Washington Post, May 25, 1984, p. A21)

June 1984	Thousands of government employees are currently being required to sign prepublication censorship agreements and to submit to lie detector examinations despite President Reagan's suspension of these controversial programs proposed in his March 1983 National Security Decision Directive 84. According to a General Accounting Office report (GAO/NSIAD-84-134) released on June 11,1984, every employee with access to sensitive compartmented information (SCI) is being required to sign a lifelong prepublication censorship agreement, Form 4193. In March 1984, the President had promised Congress he would suspend the censorship and polygraph provisions of his directive for the duration of this session of Congress. The President's censorship contract and Form 4193 are virtually identical. Since the issuance of Form 4193 in 1981, approximately 156,000 military and civilian employees have been required to sign such agreements at the Department of Defense alone. The GAO reports that employees in 22 other federal agencies have also signed these agreements. (U.S. House of Representatives, news release, "GAO Update on Administration Lie Detector/Censorship Status Reveals Reagan Promise of Suspension Has Little Effect: Brooks Calls for End to Programs, Prohibition by Law," released June 13, 1984)
July 1984	For the first time in 45 years, the *Federal Statistical Directory* has been published by a private publisher -- at nearly three times the price. Previously, the directory was created by the Commerce Department's Office of Federal Statistical Policy and Standards and sold through the Government Printing Office. After the statistical office was transferred to the Office of Management and Budget, OMB killed the book as part of its drive to scrap unnecessary publications. When GPO sold the 1979 edition, the most recent available from the government, it charged $5. The private publisher has updated the 1979 version, added an index and appendix and set his price at $14.95. ("U.S. Statistics Go Up in Private Printing," *Washington Post*, July 24, 1984)
July 1984	Three years after the Reagan Administration began slashing the budgets of federal statistical agencies, the General Accounting Office has concluded that most major studies were not jeopardized, in part because the cuts generally have been restored by Congress. According to the report, "Status of the Statistical Community After Sustaining Budget Reductions" (GAO/IMTEC-84-17), the National Center for Education Statistics, similar to other statistical agencies, protected its core survey programs when budget cuts were required. The Center also considered whether programs were necessary because of congressional mandates or because of Departmental requirements. As a result of applying these two criteria, the Center made most of its reductions in the areas of technical assistance to states and library services. Program initiatives that were put on hold included obtaining data on international education and measuring adult functional literacy. (*Washington Post*, August 2, 1984)

August 1984 The Department of Energy published revised proposed regulations on identification and protection of unclassified controlled nuclear information (UCNI) in the August 3 *Federal Register*, pp. 31236-46. DOE said that the proposed regulations have been changed to clarify their intended scope, with several of the changes specifically directed at the concerns of librarians. "Other than the fact that certain documents that, in the past, would have been released to libraries no longer will be released in the future, these regulations have no direct impact on the operation of public or university libraries." The broad scope of DOE's April 1983 proposal raised concern about access to information on nuclear research in libraries which are depositories of DOE nuclear materials.

On September 13, Sandra Peterson, Documents Librarian at Yale University, testified for ALA at a DOE public hearing on the proposed revision. While questioning the philosophy which allows an agency to restrict access to unclassified information, Peterson acknowledged DOE's congressional mandate to issue regulations under section 148 of the Atomic Energy Act, and commended DOE for responding to criticism and adopting a realistic approach.

August 1984 On August 8 the Joint Committee on Printing held an all-day informational session at which JCP staff answered questions on the revised draft of the "Government Printing, Binding, and Distribution Policies and Guidelines" published in the June 26 *Congressional Record* (pp. H7075-78). The original draft revision published in November 1983, intended to embrace new technologies and replace JCP micromanagement procedures with oversight and policy-making functions, generated hundreds of comments. ALA commented favorably on both drafts, particularly the provisions for technological change and support of the depository library program.

The JCP staff explained that the current JCP regulations were now being termed "policies and guidelines" in light of the Supreme Court's decision (*INS v. Chadha*, 102 S. Ct. 2764 (1983)) which held legislative vetoes unconstitutional unless passed by both Houses of Congress and signed by the President. The Justice Department has advised the Defense Department that it need not seek JCP approval as required under 44 *U.S.C.*, Section 501, before conducting printing activities outside the Government Printing Office. JCP staff director Tom Kleis said he would ask the Committee to hold hearings on Title 44 with an eye to revision, but felt the guidelines were needed as an interim step. JCP's interest as an oversight committee was in making sure that government information was available to the public at a fair price, and that copies were provided to depository libraries as required by law.

September 1984 The Postal Rate Commission recommended on September 7 postal rate increases of 10 percent for 1st class (a 22c stamp), 11 percent for 3rd class nonprofit, 8 percent for the 4th class special or book rate, and a whopping 21 percent average increase for the 4th class library rate. While in most cases the U.S. Postal Service had requested larger increases, the reverse is true for the library rate. USPS requested 12 percent; the Postal Rate Commission said 21 percent was necessary to cover recent increased transportation costs for the library rate.

The initial impact early in 1985 would be about a 15 percent increase in the library rate (from the current 47¢ for a 2-lb. package to 54¢), with the average 21 percent increase (67¢ for 2 lbs., up 42 percent over the current 47¢) over current rate at the end of the phased rate schedule for the library rate (in approximately 1986). The library rate is now in Step 14 of a 16-step phased rate schedule leading up to a rate which reflects the full attributable costs (but none of the institutional or overhead costs) of the library rate mail. (Note: At its December 12 meeting, the U.S. Postal Service Board of Governors accepted the Postal Rate Commission's recommended rates. The new rates will take effect on February 17, 1985.) (U.S. Postal Service, News, General Release No. 47, December 12, 1984)

September 1984 — In a September 14 letter to Donald Sowle, Administrator of OMB's Office of Federal Procurement Policy, 12 members of Congress stated that "While we believe that proper implementation of the A-76 Circular can help achieve more cost-effective performance of government activities, we oppose its application to library operations, which are inherently connected to the government's ability to make sound policy judgements." Signatories were Reps. William Ford (D-MI), Albosta (D-MI), Hawkins (D-CA), Simon (D-IL), Dymally (D-CA), Owens (D-NY), Barnes (D-MD), Schroeder (D-CO), Oakar (D-OH), Williams (D-MT), Brown (D-CA), and Walgren (D-PA).

September 1984 — The National Aeronautics and Space Administration announced on September 18 that a New York firm would publish and distribute "NASA TechBriefs Journal," saving NASA $600,000 a year, enabling the publisher to make a profit selling ads, and perhaps making more free copies available to the public. But the chairman of the Congress' Joint Committee on Printing declared NASA's agreement illegal, a violation of Title 44. A NASA lawyer has issued an opinion that JCP's jurisdiction applies only to publications intended for a government audience, not to all publications containing government-gathered information. In response, a JCP attorney said: "Their interpretation...is totally specious. That would leave out the larger part of the universe of government publications." ("Print Deals Seen Making GPO a Paperless Tiger," Washington Post, October 2, 1984)

September 1984 — The House Post Office and Civil Service Subcommittee on Human Resources, chaired by Rep. Don Albosta (D-MI), held oversight hearings September 20 and 25 on the implementation of OMB Circular A-76 and its effects on the federal workforce. OMB Circular A-76 sets forth executive branch policy on the performance of "commercial" activities by the federal government. At the September 25 hearing, Rep. Albosta questioned Office of Management and Budget Deputy Director Joseph R. Wright, Jr. about the appropriateness of contracting out federal libraries and said that OMB was "walking a thin line" in including the entirety of library operations in their emphasis on turning government activities over to the private sector. In his testimony, Wright listed 14 categories of activities for productivity improvement study which federal agencies will be asked to concentrate on in the near future. "Libraries" fall between "mail and file" and "laundry and dry cleaning."

Rep. Major Owens (D-NY) testified that libraries are one of the few professional functions on OMB's list and linked contracting out efforts to the Office of Personnel Management's efforts to reclassify and downgrade federal librarians. He thinks that both these efforts have ominous implications for the future and for the age of information.

October 1984 In the October 1 Federal Register, p. 38694, the Department of Commerce announced that it intends to conduct a cost comparison of its library and issue an invitation for bids under OMB Circular A-76.

October 1984 Over the past two years, parents in a housing subdivision in Morrison, CO, have watched 12 neighborhood children die of cancer, heart disease or meningitis. Another five children are battling cancer now, residents say, and there are dozens of unexplained cases of heart, brain and lung disease. The neighborhood's 5,000 residents are blaming the problem on toxic wastes and demanding government help. The Environmental Protection Agency, after rebuffing the citizens for more than a year, recently undertook a series of surveys to search for toxic polutants. However, EPA has warned that it may lack the funds to do much if it turns out that the health problems stem from toxic discharges in the neighborhood. A local activist recalls bitterly that EPA officials initially told residents that they knew of no sites in the area that could pose a hazard. With one call to the U.S. Geological Survey, the citizens secured a map showing that at least five uranium mines once operated in the immediate vicinity. "You just go to the library and look it up," the local activist is quoted as saying. ("12 Children Dead in 'Cancer Cluster' Community," Washington Post, October 4, 1984)

October 1984 The Counterfeit Access Device and Computer Fraud and Abuse Act of 1984, now part of PL 98-473, was aimed at computer hackers but could have unintended dampening effects on the public's right to know. The legislation makes it a federal offense to knowingly use or disclose information in a government computer if the computer is accessed without authorization or if the scope of authorized access is exceeded. Sens. Mathias (R-MD) and Leahy (D-VT) pointed out that the focus of the new provision is on whether access is authorized, not on whether the use or disclosure of information is

	authorized. Thus even information whose release is mandated by Freedom of Information Act might not be able to be released if the authority of a particular government employee to obtain it from a computer file were in any doubt.
October 1984	Federal agencies are publishing notices in the *Federal Register* announcing increased fees to the public for record retrieval including Freedom of Information Act requests. The increased fees implement existing policy to recover the direct costs of document search and duplication, but can be high when an individual requests information which must be retrieved by computer. For example, in the October 29 *Federal Register*, p. 43468, the U.S. Postal Service published standard charges for system utilization services which range from $189 to $1,827 per hour. Dedicated use of a 370/135 costs $15,704 per accounting period. Peripheral charges vary from $.01 per frame for offline microfilm processing to $2,960 per accounting period for inspection service processing.
November 1984	The Office of Management and Budget issued Bulletin No. 84-17, Supplement No. 1, which provides the pro-rata reduction targets necessary for federal agencies to achieve the savings targets specified in the Deficit Reduction Act of 1984. Each of the executive agencies covered by the supplement has a pro-rata reduction target of 25.6 percent for publishing, printing, reproduction, and audiovisual activities. This percentage amounts to a $347 million cut in printing and publications in 1985. ("OMB Gets Serious on Spending Cuts," *Washington Post*, November 7, 1984, p. A13)
November 1984	The Defense Department issued one directive and prepared to issue a second that will restrict the release of unclassified and previously available information about weapons and other military systems. The new rules apply to technical information generated by the Defense Department, military contractors, research organizations, universities and anyone under contract to the Pentagon. Pentagon officials said that the directives are intended to reduce the flow of militarily useful technology to the Soviet Union. Critics said the directives are worded so broadly that they could also be used to restrict the flow of embarrassing information about weapons performance. DOD officials sought to assuage fears that the new directive would be used to cut off technical information to Congress or to hide mistakes by pointing to specific provisions forbidding such actions. (*Washington Post*, November 8, 1984; *New York Times*, November 5 and 8, 1984)
November 1984	The Chemical Information System (CIS), 20 chemical data bases with physical and regulatory data, which the Environmental Protection Agency (EPA) has operated since 1973, has been turned over to private contractors without providing any interim federal funding. Each of the two contractors who have taken over the data base has a different plan for the system's future. Users claim that this will "put the system in chaos." When there are two different data bases, users will be forced to subscribe to both to get what they could previously get from one -- "twice the overhead and twice the

work." Still another concern is that unprofitable but scientifically valuable components of the system are likely to be dropped. A proposal to move the system to the National Library of Medicine gained some Congressional support but was not considered before Congress adjourned. ("EPA Dumps Chemical Data System," Science (November 16, 1984))

December 1984

A 32-page report prepared by Harvard University asserts that federal agencies have greatly expanded their demands to see academic research before it is published. Officials on other campuses describe the report as the most comprehensive catalog yet published of restrictions on university research that the government funds, and that it marks the beginning of a concerted effort by research universities to roll back such restrictions in the Reagan Administration's second term. ("Campuses Fear Federal Control Over Research," New York Times, December 18, 1984)

December 1984

The United States cast the lone vote in the United Nations General Assembly against the continued publication and expansion of a directory listing 500 potentially dangerous products that are banned, restricted or have failed to win approval in any one of 60 countries. The Assembly vote was 147 to 1. A United States delegate said the American vote reflected the Reagan Administration's belief that the $89,000 expenditure on the publication was "wasteful" because the information was generally available elsewhere, although not all in one place. Some nations contended after the vote that the United States was not sensitive to their need for quick, easy information. A member of the Bangladesh delegation said: "It is very difficult for developing countries to collect this information on their own."

The United States voted against the initial publication of the directory in 1982 and has since declined to provide data for it. The publication's information about substances banned or restricted in the United States was compiled with the help of the Natural Resources Defense Council which filed a Freedom of Information request with federal agencies to obtain it. ("U.S. Lone Dissenter in 147-1 Vote at U.N. on Toxic-Products Book," New York Times, December 19, 1984)

December 1984

The State Department announced on December 19 that it will go ahead with the announced withdrawal of the United States from the United Nations Educational, Scientific and Cultural Organization (UNESCO) on December 31, ending 38 years of membership. United States membership could be renewed if UNESCO makes certain changes in its operation, according to a State Department spokesman. (Washington Post, December 20, 1984)

WHAT HAPPENED TO THE CIVIL SERVICE STAFF WHO WERE IN THOSE JOBS?

- Many of the professionals have had to leave the government/forced out
- Some of them have been reassigned to other positions outside the library
- There has been no move to accept employment with the contractor firm
- Career opportunities for librarians in the federal government have been foreclosed

WHAT'S LIKELY TO HAPPEN NOW?

The shift of OMB terminology from "contracting out" to "productivity" makes libraries more vulnerable since no one wants to be seen as opposing productivity or studies announced to be productivity studies.

OMB's policy inconsistencies continue to persist. OMB has directed agencies to confine their productivity studies to activities requiring 10 or more full time staff. Despite this, OMB continues to target library operations for study even though OMB knows that 90% of federal libraries have 10 or fewer full time staff.

Retaining knowledgeable career staff to provide library services becomes more difficult as more libraries are contracted out in their entirety under OMB pressure, making it difficult to retain any federal presence in the library services to the agencies.

WHAT'S OMB'S BOTTOM LINE GOAL IN ALL OF THIS?

- Achieve better management
- Upgrade cost control
- Save money
- Improve productivity

WHAT ARE THE FEDERAL LIBRARY GOALS?

- Achieve better management
- Upgrade cost control
- Save money
- Improve productivity

BUT, in addition, the federal library goals include:

- Provide continuity of essential service to decision makers
- Protect the transmission link of government sensitive information to government managers by maintaining federal control of that linkage.

WHAT'S THE DIFFERENCE BETWEEN THE TWO?

- Prudent caution about inflicting permanent damage on the federal library system and its users
    - damage which may not be visible for years
    - damage which may prove irrevocable and unreversible

WHAT IS ABOUT TO HAPPEN UNLESS THERE IS SOME CONGRESSIONAL OVERSIGHT?

- Dismantling of the federal library system, endangering all the public sector libraries: federal, state and local
- Placing the federal information communication network in the hands of profit-motivated private sector companies
- Losing institutional memory
- Increasing the vulnerability of our government policy makers by the loss of command of that federal communication link.

WHO WILL BE THE LOSERS?

- Government
- Federal users
- the Public
- all of Us, We the People

WHAT ARE SOME OF THE LONG TERM CONSEQUENCES?

- Contracting of entire federal libraries threatens the continuity of essential information services to government decision makers
- In times of tight budgets, contractor-libraries will be prime targets for elimination without regard to the information needs of the agency staff or the public
- The degree of attention riveted on A-76 distracts from other serious new proposals at OMB, e.g., the proposed federal information management circular, user/use fees, electronic data bank access, etc.

WHAT CAN YOU DO?

- Read the basic documents: understand the situation and its consequences
- Talk or write to your Congressional Representative or Senator about your concern
- ASK:
    - Why is OMB concerned about the "Performance of Commercial Activities?"
    - Shouldn't we be more concerned about: "Performance of Government Activities?"

REFERENCES

- OMB Circular No. A-76, "Performance of Commercial Activities," including the Supplement, may be obtained from the Publications Office of OMB, 726 Jackson Place, N. W., Washington, D. C. 20503, (202) 395-7332.
- U. S. House of Representatives, 98th Congress, 2nd Session, Hearings by the Subcommittee on Human Resources of the Committee on Post Office and Civil Service on the "Implementation of Circular A-76," September 20 and 25, 1984. GPO, 1985, pp. 282-298.
- The most readable summary appears in the ALA 1984 Yearbook, "Contracting for Federal Library Operations," by A. Hearne, pp. 134-135.

1985

A-76 A LIBRARY CRISIS

A-76: WHAT IS IT?

A-76 refers to a U. S. Office of Management and Budget policy Circular: "Performance of Commercial Activities." This Circular became binding on all Executive Branch agencies on August 4, 1983, in its revised edition. OMB regards it as a tool for management in determining whether what OMB deems commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel.

Library operations appears on the list of suggested commercial activities which includes,e.g., laundry and dry cleaning.

WHAT'S THE ISSUE?

Are libraries commercial activities? Should federal libraries be contracted out to the private sector?

OMB'S VIEW

With the exception of research functions, OMB contends that federal libraries are not, generally, governmental; therefore, they should be contracted to the private sector.

FEDERAL LIBRARIANS' VIEW

OMB is using A-76 to dismantle the federal library system without regard for:

- the policy information contributor role provided by libraries to the agency
- the need for long range continuity and corporate memory
- the risk to national security of information sources and channels

WHAT'S HAPPENED TO FEDERAL LIBRARIES SO FAR?

Three major federal libraries have been contracted out in their entirety: the Headquarters library of:

- Department of Energy
- Housing and Urban Development
- Environmental Protection Agency

At least 1 major library system is now threatened with total contracting:

- NOAA - Headquarters Library and a major field library

Three other federal libraries - major dimensions are now on the inventory and appear to be targeted.

Over 100 other libraries - many of them in the Department of Defense - have appeared in the Commerce Business Daily notices as under review; among them are:

- Office of Personnel Management
- Agricultural Research Service

In the contracts awarded so far, the award was made on the basis of the lowest cost bid.

WHAT HAVE THE FEDERAL LIBRARIANS DONE ABOUT THIS SITUATION?

- opposed the inclusion of library operations at the OMB hearings, 1983
- fought to have the footnote statement included in A-76, citing the need for special judgment in the case of research libraries and research functions in libraries
- petitioned the Federal Library and Information Center Committee to sponsor A-76 courses
- urged the support of other interested professional associations
- presented legislative updates at professional society meetings
- formed an information exchange/assistance network
- maintained communications with the OMB Office of Federal Procurement Policy
- submitted major testimony for the Congressional Hearings in September, 1984 on the Implementation of Circular A-76 conducted by Subcommittee on Human Resources of the Committee on Post Office and Civil Services; the testimony was based on a risk analysis of A-76:
    - complexity/maturity of the federal library/information system
    - existence of in-House federal expertise
    - security of sensitive information
    - cost knowledge - ability to forecast costs
- succeeded in having the American Library Association pass two resolutions in 1985 urging appropriate government officials to remove:
    - libraries from the OMB list of commercial activities
    - librarians from the non-professional listing of labor categories issued by the Department of Labor

SO WHAT HAVE THE AGENCIES DONE ABOUT THIS SITUATION?

DOD has declared some of their libraries, primarily R&D, as exempt for a 5 year period

A few - very few - Other government agencies have declared their libraries to be an inherently governmental function and thus excluded from A-76 review

A few government agencies have found administrative reasons to exclude their libraries from A-76:

- under 10 full staff
- presence of handicapped/veteran staff

A large number of agencies have placed their libraries on the A-76 study list, sometimes lumping them in with lawn maintenance and warehouse operations in an umbrella contract

A few agencies have used A-76 as an excuse to expand current small contracts to include all library operations without a prior study or cost review.

Mr. **English**. I don't believe I have any questions.

Mr. Miller.

Mr. **Miller**. No questions.

Mr. **English**. Mr. Kleczka.

Mr. **Kleczka**. No questions. But I think a lot of the questions you pose should be answered before we move full steam ahead.

Thank you very much.

Mr. **Owens**. Again I congratulate the committee. I certainly would like to work very closely with you in any way I can.

Mr. **English**. Thank you very much. We appreciate your coming here today and giving us your time. We appreciate that.

Next we will have another panel. We will hear from Francis J. Buckley, Jr., who is assistant director for technical services with the Detroit Public Library in Detroit, MI, accompanied, I believe, by Eileen Cooke, who is the deputy director of the Washington office, American Library Association. They will be representing the American Library Association. Joseph Duncan, is the corporate economist and chief statistician, Dun & Bradstreet, accompanied by Robert Willard. They will be representing the Information Industry Association.

We start off with Mr. Buckley.

STATEMENT OF FRANCIS J. BUCKLEY, JR., ASSISTANT DIRECTOR FOR TECHNICAL SERVICES, DETROIT PUBLIC LIBRARY, ACCOMPANIED BY EILEEN COOKE, DEPUTY DIRECTOR, WASHINGTON OFFICE, AMERICAN LIBRARY ASSOCIATION

Mr. **Buckley**. Thank you very much, Mr. Chairman.

Mr. **English**. Before you start, I want to tell our witnesses again, as I stated this afternoon, that if you care to summarize your testimony, without objection, your full and written testimony will be made part of the record.

Mr. **Buckley**. I would indeed prefer to do that. I submitted a fairly lengthy statement and I would like to just call attention to some of the highlights of that statement.

With me, as mentioned, is Eileen Cook, director of the American Library Association, Washington office.

I am very pleased to be here on behalf of members of the American Library Association. I appreciate the opportunity to comment on the information policy questions that are raised by proposed Federal electronic data collection and dissemination systems, and by the proposed Office of Management and Budget policy circular on management of Federal information resources which appeared in the March 15 Federal Register.

Librarians throughout the Nation seek and use government information not for their own purposes, but as intermediaries for the public. This role, in turn, leads to an awareness on the librarian's part of the diverse interests, information needs, and expectations of the public.

There are over 100,000 libraries in the United States, about 1,400 of which are depository libraries. Nearly all of these libraries, whether serving elementary school children, university scholars, or business and industry, rely to some degree on the ability to access government information through free distribution programs or purchase.

Widely accessible and low-cost government information stimulates economic, educational, scientific, and technical development in areas ranging from agriculture and art, to solar energy, space technology, and zoology, while also making the American people aware of the activities of their Government.

Paradoxically, the policies proposed will sharply reduce the Government's efforts to collect and disseminate information to the public and accelerate the current trend toward commercialization and privatization of government information.

There is no effort to ensure equal, ready access to government information for all citizens.

Indeed, the circular proposes to narrowly define "access to information" as "the function of providing members of the public, upon their request, the Government information to which they are entitled under law." Public access would be provided consistent with the Freedom of Information Act, which can be complex, time-consuming, and expensive.

According to the proposed circular, agencies shall "create or collect only that information necessary to achieve agency mission objectives and only after planning for its processing, transmission, dissemination, use, storage, and disposition." The studies that are proposed seem extremely burdensome.

One criteria proposed is that "the public and private benefits derived from government information must exceed the public and private costs of the information."

There are no tests or measures proposed, or any that I am aware of, which would ensure an accurate or exact quantification of "the public and private benefits derived from government information" without commissioning a major research project for each information product or service.

Currently, OMB is imposing administrative budget cuts on agencies which are forcing reductions in publication programs without adequate consideration of the utility of the information in meeting the agency's mission and in serving the public interest.

For example, the Bureau of Labor Statistics is being forced, among other cuts, to reduce the Monthly Labor Review to a quarterly publication.

Approximately 1,000 depository libraries and about 12,000 subscribing individuals, organizations, and nondepository libraries will have less access to current statistics on consumer price indexes, employment, unemployment, productivity, et cetera.

There should be a public review process to collect public concerns regarding proposed eliminations of government publications. The association recommends that all proposed reductions be listed in the Federal Register for comment.

Agencies are also encouraged in the draft circular to place maximum feasible reliance on the private sector to satisfy information needs and to disseminate information products and services.

Agency dissemination is to be restricted to only that required by law or that essential to the agency's mission if the products and services do not duplicate those provided either by other government or private sector organizations, or those that could reasonably be expected to be provided in the absence of agency dissemination.

These complex and restrictive policies will inhibit dissemination of government information to libraries, to the tax-paying public, and to the Government itself. The philosophy that other sources of availability for the information should suffice to accomplish both the Government's responsibility to provide public access to government information and the citizen's right to equality of access to information is not always supported by actual instances.

For example, the Merit Systems Protection Board announced in the March 4, 1985, Federal Register that it will no longer publish the full text of its decisions in bound volumes, but referred users to private sector sources for MSPB decisions. The bound volumes in the past have been provided at no charge to 472 depository libraries, including 37 Federal libraries.

In addition, 500 to 1,000 copies of the volumes have been sold by the Government Printing Office at a cost of approximately $55 per year. The Federal Register notice listed four private publishers which offer the MSPB decisions in various formats—bound volumes, looseleaf services, and microfiche—not all of which include the complete decisions, at prices ranging from $250 to $498 per year.

Discontinuation of publication by the Government removes the item from the Depository Library program, the GPO sales program, and inhibits public access to the decisions. Few depository libraries or citizens will be subscribing at those prices.

The cost to the Government itself for one copy of the MSPB decisions for each of the Federal libraries which are currently depository recipients could be over $18,000. The Joint Committee on Printing is discussing the ramifications of this decision with the Merit Systems Protection Board staff.

OMB's proposed circular states "a general predisposition to use up-to-date information technology to manage Federal information resources."

Although the draft says that "agencies should ensure that access is provided to each class of users upon reasonable terms," and the supplementary material indicates that they should "avoid problems arising from monopolistic control," no guidelines are provided to agencies on how to implement this policy nor are agencies told what are acceptable ways to prevent contractors functioning as sole suppliers from exercising monopolistic controls in ways that defeat the agencies' information obligations.

The present programs for dissemination of printed government information products for public access, while not as coordinated and efficient as one would wish, do offer a model for meeting government, public, and private interests in Federal information.

The program now distributes copies of unclassified government documents of public interest and educational value in paper copy or microfiche to nearly 1,400 designated libraries. Public, academic, State, and Federal libraries serve as depositories. At least one Depository Library is located in each of the 435 congressional districts.

The average number of libraries receiving hard-cover items is 480. Microfiche items are selected by an average of 410 libraries.

Certainly, this is not overwhelming or excessive distribution of documents given the size and population of the United States.

To complement the depository dissemination, the Government Printing Office, the National Technical Information Service, and various Federal information centers offer nonprofit sales programs which recover the cost of duplication and dissemination to individuals or organizations.

Last, private sector publishers play a vital role in the process by repackaging, adding value by supplementing the information or reindexing, and by marketing noncopyrighted Government information to reach the widest possible audience.

This diversity of channels for the dissemination of Government information in hard copy must be maintained to achieve equal and ready access to such information for all Americans.

The same principles should be applied to Government information in electronic files. There is an accelerating tendency of Federal agencies to use computer and telecommunications technologies for data collection, storage, retrieval, and dissemination.

The American Library Association has requested programs for free public access to Government publications in all formats, interpreting chapter 19, title 44, United States Code, in a broad sense in light of new technological ways of publishing.

The Joint Committee on Printing appointed an ad hoc committee to evaluate the feasibility and desirability of providing such access. The ad hoc committee, supported the principle that the Federal Government should provide access to Federal information in electronic form through the depository system.

The committee deemed it is technologically feasible to and recommended that the economic feasibility be investigated through pilot projects.

Programs such as the proposed Security and Exchange Commission [SEC] electronic data gathering, analysis, and retrieval system offer potential for various levels of dissemination not available heretofore. A base level of free public access to this Federal electronic data base would be feasible via depository library sites.

In conclusion, the American Library Association is concerned about equal and ready access to Government information in all formats for the American public. OMB's recent budget cuts, the proposed circular, and the SEC EDGAR project all place emphasis on the private sector for information collection and dissemination.

There is little regard for the information needs of the average citizen, who cannot buy all the products containing all the Government information they may need.

Further cuts in data collection, publishing, and information dissemination programs should be halted until all the issues can be fully explored and a public review process implemented.

The OMB draft policy circular should be revised to clearly spell out dissemination required by law through the Depository Library Program, and to provide more balance between public and private sector interests.

Government information is a public resources which should be disseminated and accessible via libraries, agencies dissemination, public and private sales programs, and other channels.

Thank you very much.

Mr. ENGLISH. Thank you very much, Mr. Buckley.

[The prepared statement of Mr. Buckley follows:]

Statement of
Francis J. Buckley, Jr.
Assistant Director for Technical Services
Detroit Public Library

before the

House Government Operations Committee
Subcommittee on Government Information, Justice and Agriculture

on

The Office of Management and Budget Proposed Circular
on Management of Federal Information Resources

April 29, 1985

My name is Francis J. Buckley, Jr. I am the Assistant Director for Technical Services at the Detroit Public Library which has been a depository library since 1868, and thus a center for public access to government information.

I am pleased to appear on behalf of the members of the American Library Association. Nearly 40,000 librarians, library trustees, educators, and other information professionals dedicated to the improvement of library services for all citizens are members of the American Library Association. I am currently serving on the Association's policy-setting Council and I am the Chairperson of an Ad Hoc Committee established to form a Coalition on Government Information. I am also a past chairperson of the Association's Government Documents Round Table.

As a member of a profession dedicated to meeting the daily information needs of our nation's citizens, I appreciate the opportunity to comment on the information policy questions that are raised by proposed federal electronic data collection and dissemination systems, and by the proposed Office of Management and Budget (OMB) policy circular on management of federal information resources which appeared in the March 15, 1985 *Federal Register*.

In many respects the concern of the American library community is a clear reflection of the public concern in the area of access to government information. Librarians throughout the nation seek and use government information not for their own purposes, but as intermediaries for the public. This role, in turn leads to an awareness on the librarian's part of the diverse interests, information needs, and expectations of the public. It is because of our intimate knowledge of the usefulness and crucial importance of government information, as well as our belief that the citizenry should have ready access to unclassified information of public interest or educational value, that the American Library Association has throughout its history, taken an active interest in the library and information activities of the federal government.

Although many of our concerns focus on the Depository Library Program of the Government Printing Office, it is important to note that there are over 100,000 libraries in the United States, only 1385 of which are depository libraries. Nearly all of these libraries, whether serving elementary school children, university scholars, or business and industry, rely to some degree on the ability to access government information through free distribution or purchase.

Because information is not a consumable commodity, making its existence widely known and available reaps the greatest benefit from those dollars spent on its generation. Widely accessible and low cost government information stimulates economic, educational, scientific and technical development in areas ranging from agriculture and art, to solar energy, space technology, and zoology while also making the American people aware of the activities of their government. Demographic information, health research, studies of social trends and social problems, basic scientific research, and information of use to business and industry which is collected, compiled, or produced by the federal government stimulate growth and development in our society.

In the policy circular proposed by OMB, the federal government is acknowledged to be "the largest single producer, consumer, and disseminator of information in the United States." The Circular recognized that:

> Government information is a valuable resource. It is an essential tool for managing the government's operations, provides citizens with knowledge of their society, and is a commodity with economic value in the marketplace.

In addition, the proposed Circular acknowledged:

> The open and efficient exchange of government scientific and technical information, subject to applicable national security controls and proprietary rights others may have in such information, fosters excellence in scientific research and development funds.

But paradoxically, the policies proposed will sharply reduce the government's efforts to collect and disseminate information to the public and accelerate the current trend toward commercialization and privatization of government information. There is no effort to ensure equal, ready access to government information for all citizens. Indeed the Circular proposes to narrowly define "access to information" as "the function of providing members of the public, upon their request, the government information to which they are entitled under law." Public access would be provided consistent with the Freedom of Information Act. Yet the American Library Association has documented that federal agencies are increasing fees to the public for record retrieval, including FOIA requests. These fees can be high when an individual requests information which must be retrieved by computer. For example in the October 29, 1984 Federal Register, the U.S. Postal Service published standard charges for system utilization services which range from $189 to $1,827 per hour. While automation clearly offers promises of savings in government operations, will public access to government information be restricted for people who cannot afford computers or cannot pay for computer time?

Another contradictory example is the List of Endangered and Threatened Wildlife and Plants. The U.S. Fish and Wildlife Service discontinued the periodic publication of the list in the Federal Register, and instead in the August 17, 1984 Federal Register offered to supply copies of the document upon request. It is apparently free, but none of our patrons who have written have received a copy.

According to the proposed circular, agencies shall "create or collect only that information necessary to achieve agency mission objectives and only after planning for its processing, transmission, dissemination, use, storage, and disposition." The studies that are proposed seem extremely burdensome. In addition one of the Basic Considerations and Assumptions is that "the public and private benefits derived from government information must exceed the public and private costs of the information." There are no tests or measures proposed, or any that I am aware of, which would ensure an accurate or exact quantification of "the public and private benefits derived from government information" without commissioning a major research project for each information product or service.

Currently, OMB is imposing administrative budget cuts on agencies which are forcing reductions in publication programs without adequate consideration of the utility of the information in meeting the agency's mission and in serving the public interest. For example, the Bureau of Labor

BEST COPY AVAILABLE

Statistics is being forced, among other cuts, to reduce the *Monthly Labor Review* to a quarterly publication and to eliminate the following items: *How the Government Measures Unemployment*, *Questions and Answers on Male and Female Earnings*, *A Profile on Black Workers*, *Historical Supplement to Employment and Earnings*, *Family Employment Characteristics Data Book*, *Handbook of Labor Statistics*, and *Productivity and Manufacturing*. There should be a public review process to collect public concerns regarding proposed eliminations of government publications. The Association recommends that all proposed reductions be listed in the *Federal Register* for comment.

Agencies are also encouraged in the draft circular to place maximum feasible reliance on the private sector to satisfy information needs and to disseminate information products and services. Agency dissemination is to be restricted to only that required by law or that essential to the agency's mission *if* the products and services do not duplicate those provided either by other government or private sector organizations, or those that could reasonably be expected to be provided in the absence of agency dissemination. When these conditions are met, agencies may disseminate government information products in a manner that reasonably ensures the information will reach the public, in the manner most cost effective for the government with maximum feasible reliance on the private sector, so as to recover costs through user charges, and only after establishing procedures for periodically reviewing the continued need for and manner of dissemination.

These complex and restrictive policies will inhibit dissemination of government information to libraries, to the tax-paying public, and to the government itself. The philosophy that other sources of availability for the information should suffice to accomplish both the government's responsibility to provide access to government information and the citizen's right to equality of access to information is not always supported by actual instances. For example, the Merit Systems Protection Board announced in the March 4, 1985 Federal Register that it will no longer publish the full text of its decisions in bound volumes, but referred users to private sector sources for MSPB decisions. The bound volumes in the past have been provided at no charge to 472 depository libraries, including 37 federal libraries. In addition, 500 to 1000 copies of the volumes have been sold by the Government Printing Office at a cost of approximately $55 per year. The Federal Register notice listed four private publishers which offer the MSPB decisions in various formats (bound volumes, looseleaf services, and microfiche), not all of which include the complete decisions, at prices ranging from $250 to $498 per year. Discontinuation of government publication removes the item from the Depository Library Program, the GPO Sales Program, and inhibits public access to the decisions. Few depository libraries or citizens will be subscribing at those prices. The cost to the government itself for one copy of the MSPB decisions for each of the federal libraries which are currently depository recipients could be over $18,000. The Joint Committee on Printing is discussing the ramifications of this decision with the Merit Systems Protection Board staff.

In another example, the former United States Court of Claims published its Cases Decided through the Government Printing Office. Copies were therefore distributed to 557 depository libraries and about 300 copies were sold by the Superintendent of Documents for about $82 in 1982, the last year they were published. The reports of the new United States Claims Court are being published commercially for $219 for six volumes to bring the set up to date, plus an estimated $102 per year for future issuances.

The new Court Judges and Clerk are provided free copies by the commercial publisher, but the Court purchases copies for its own library as must all other government agencies, libraries, and the public.

OMB's proposed circular states "a general predisposition to use up-to-date information technology to manage federal information resources." Although the draft says that "agencies should ensure that access is provided to each class of users upon reasonable terms," and the supplementary material indicates that they should "avoid problems arising from monopolistic control," no guidelines are provided to agencies on how to implement this policy nor are agencies told what are acceptable ways to prevent "contractors functioning as sole suppliers for the government to exercise monopolistic controls in ways that defeat the agencies' information obligations, for example by setting unreasonably high prices." This is not clearly delineated in the circular and OMB does not indicate how it is going to monitor the implementation of the circular to prevent such abuses. No standard is set for determining "unreasonably high prices." Examples which I have provided today of private sector prices for former government publications indicate the barriers to public access which can be created by privatizing government information.

The President of the American Library Association, E.J. Josey of the New York State Library, has stated:

> Nobody would deny the utility of many of these services provided by the private sector, but [they] are not available to all of the American people; their purpose is to yield a profit, and they are designed only for those who can pay for them. Nor do they have any obligation to provide access to all or any information; only that information which the suppliers deem profitable or potentially so. Only the preservation of public services, publicly supported, can assure that each individual has equal and ready access to information, whether provision of that information to that individual is economic (i.e., profitable, in private sector terms) or not.

The present programs for dissemination of printed government information products, for public access, while not as coordinated and efficient as one would wish, do offer a model for meeting government, public, and private interests in federal information. The Depository Library Program as specified in Chapter 19, Title 44, U.S. Code, provides for the distribution of informational matter published as an individual document at Government expense, or as required by law. It began in the mid-nineteenth century and was essentially outlined in the Printing Act of 1895. In an era of a smaller federal government, and when ink on paper was the only mechanism for recording information, the depository program operated adequately to fulfill the government's responsibility to inform the public about the policies and activities of the federal government. The program now distributes copies of unclassified government documents of public interest and educational value in paper copy or microfiche to nearly 1400 designated libraries. Public, academic, state, and federal libraries serve as depositories. At least one Depository Library is located in each of the 435 Congressional Districts. These libraries receive publications issued by the Executive, Judicial, and Legislative branches at no charge in return for maintaining the documents and providing free public access. There are 51 Regional Depositories (including the Detroit Public Library) which receive and retain all documents. The remainder are partial Depositories which select the series of documents of most interest to their constituencies, and borrow from other depositories to fill requests for items not selected. The average number of libraries receiving hard cover items is 480. Microfiche items are selected by an average of 410 libraries. Certainly, this is not overwhelming or excessive distribution of documents given the size and population of the United States.

The Depository Library Program is an extremely cost effective mechanism for providing a basic level of access to government information for the public. The cost to the Government Printing Office for printing and distribution is approximately $24 million dollars, about $17,300 per depository library, or about 10¢ per person in the United States. Other government agencies help support the program by providing copies of materials published other than through GPO. The program is a cooperative venture in which many libraries invest a great deal. At the Detroit Public Library, a few years ago, a sample study indicated we were spending over $250,000 to support public access to the government documents.

To complement the depository dissemination, the Government Printing Office, the National Technical Information Service, and various federal information centers offer nonprofit sales programs which recover the cost of duplication and dissemination to individuals or organizations.

Lastly, private sector publishers play a vital role in the process by repackaging, adding value by supplementing the information or reindexing, and marketing noncopyrighted government information to reach the widest possible audience.

This diversity of channels for the dissemination of government information in hardcopy must be maintained to achieve equal and ready access to such information for all Americans. The same principles should be applied to government information in electronic files. There is an accelerating tendency of federal agencies to use computer and telecommunications technologies for data collection, storage, retrieval, and dissemination. Many government publications are being stored in electronic format only, and printed versions are being eliminated. Access to some government data files is being provided via contractual arrangements with commercial vendors who provide fee based search services, through the sale or lease of the tapes or discs, or via provision of free on-line access to a database such as the Patent Office system available to patent depository libraries. The American Library Association has requested programs for free public access to government publications in all formats, interpreting Title 44, U.S. Code, in a broad sense in light of new technological ways of publishing. The Joint Committee on Printing appointed an Ad Hoc committee to evaluate the feasibility and desirability of providing such access. The Ad Hoc committee, composed of representatives of executive and legislative branch agencies, library associations, and industry associations, supported the principle that the federal government should provide access to federal information in electronic form through the depository system. The committee deemed it is technologically feasible to provide such access, and recommended that the economic feasibility be investigated through pilot projects.

The proposed circular recognizes that:

> The use of up-to-date information technology offers opportunities to improve the management of government programs and access to, and dissemination of government information.

Programs such as the proposed Security and Exchange Commission (SEC) Electronic Data Gathering, Analysis and Retrieval system offer potential for various levels of dissemination not available heretofore. A base level of free public access to federal electronic data bases would be feasible via depository library sites.

In conclusion, the American Library Association is concerned about equal and ready access to government information in all formats for the American public. OMB's recent budget cuts, the proposed circular, and the SEC EDGAR project all place emphasis on the private sector for information collection and dissemination. There is little regard for the information needs of the average citizen, who cannot buy all the products containing all the government information they may need.

Further cuts in data collection, publishing, and information dissemination programs should be halted until all the issues can be fully explored and a public review process is implemented.

The OMB draft policy circular should be revised to clearly spell out dissemination required by law through the Depository Library Program, and to provide more balance between public and private sector interests. Government information is a public resource which should be disseminated and accessible via libraries, agency dissemination, public and private sales programs, and other channels.

From its founding, the basic principle of American democracy has been informed citizen participation in the running of popular government. Freedom of speech and freedom of the press are only parts of the larger concept. Open and ready access to ideas and information is essential to enfranchise citizens to full participation in our society. ALA has followed the development of the proposed circular with great interest and responded to OMB's request for public comment in the fall of 1983. Attached is the resolution which our Council passed summing up our position on the management of federal information resources.

I will be happy to answer any questions.

RESOLUTION REGARDING OMB'S PROPOSED CIRCULAR ON FEDERAL INFORMATION MANAGEMENT

WHEREAS, equal and ready access to unclassified government information and publications is a primary tenet of a free society; and

WHEREAS, access to government information and publications is essential for an informed society; and

WHEREAS, government has a responsibility to make available the information collected and created by it; and

WHEREAS, full recovery of costs attendent to the collection and publication of government information will restrict access by a segment of the public; and

WHEREAS, new technology in information collection and dissemination has created changes in traditional methods of access; and

WHEREAS, the Congress of the United States has previously mandated free access to government information through agency distribution and the Depository Library system; and

WHEREAS, the Office of Management and Budget has initiated a policy development process on the collection, dissemination, costs, and the role of the private sector in government information and publication processes;

THEREFORE BE IT RESOLVED, that the American Library Association reaffirms that there should be equal and ready access to data collected, compiled, produced, and published in any format by the government of the United States; and

BE IT FURTHER RESOLVED, that the American Library Association urges OMB to include this principle in the final policy circular concerning Federal information management; and

BE IT FURTHER RESOLVED, that the Washington Office of ALA continue to monitor and communicate the Association's concerns during OMB's policy development process; and

BE IT FURTHER RESOLVED, that the Washington Office inform OMB of the willingness of member groups to assist in the preparation of a policy circular on Federal information management.

Adopted by the Council of the
American Library Association
Washington, D.C.
January 11, 1984
(Council Document #31.7)

Mr. ENGLISH. Mr. Duncan.

STATEMENT OF JOSEPH DUNCAN, CORPORATE ECONOMIST AND CHIEF STATISTICIAN, DUN & BRADSTREET, ACCOMPANIED BY ROBERT WILLARD, INFORMATION INDUSTRY ASSOCIATION

Mr. DUNCAN. Thank you very much. I will take you up on not reading my full statement, but adding it to the record.

I would like to add to it a document referred to in my statement called "Meeting the Information Needs in the New Information Age."

Mr. ENGLISH. Without objection, that will be made part of the record.

Mr. DUNCAN. It is indeed an honor to have this opportunity to offer views on the proposed OMB information policy statement.

I am accompanied by Bob Willard, who is the vice president for Government relations of the Information Industry Association, and I am speaking on behalf of that association.

In addition to my background, as noted in the formal presentation, I want to underscore my personal professional interest in these issues by noting that I served on the Public Sector Task Force of the National Commission on Libraries and Information Sciences during the period 1980 to 1982, where for 2 years representatives of Government, libraries, information providers, and hardware manufacturers debated the issues that are addressed in part in the OMB circular.

That report I would commend to this committee and to all interested parties because it sets forth a number of principles that were fundamentally agreed to unanimously by the diverse people that debated the issues over a long period of time.

I might note that at that time I was on the other side. I was representing the Government as a member of the Department of Commerce. I was Director of the Office of Federal Statistical Policy and Standards. But my views are no different on the other side of the table.

The statement by IIA, I think, supports the principles that were outlined by the Public Sector/Private Sector Task Force of the Library Commission, and certainly relates directly to the principles that are outlined in the OMB statement.

My formal statement does deal with a number of specific examples of how there is an inherent potential conflict between the Government and the private sector in the dissemination of information.

I would like to submit for your consideration the view that the best and only way to serve the diverse information needs of society is through a free marketplace of information flow, where providers and users can relate through willingness to pay for or support the information itself.

I think the depository library represents an eloquent example of that principle. As was noted by the previous speaker, there are about 1,400 depository libraries.

Trying to cope with 25,000 publications from the Government each year, most depository libraries take the view they don't want all that material because they don't have shelf space for it, and microfiche for the 400 libraries that use it also provides a difficult administrative problem.

When you examine the use of the depository library as a representative of the consuming public, you find that when you get down to the item that is 200th most frequently used, only 60 percent of the depository libraries agree on that item, so quite clearly there is a diversity of interest in the marketplace of users represented by the depository librarians and their community.

I served in the policy area trying to deal with the public standards and when statisticians ask people what information they want, you get one of two responses: Either they want exactly what they have at the moment, which is kind of a statistical approach, or they want information on everything conceivable regardless of cost of collection or dissemination.

Given this diversity, it is the fundamental philosophy of our statement and also the Public Sector/Private Sector Task Force that the marketplace is the place to set the proper priorities for what information should be collected and disseminated.

Now, in contrast to that, there is also an important principle, which is that Government itself is by definition an information activity. Almost all Government activity revolves around information.

In fact, if you look at the administrative costs of Government, they are fundamentally associated with receiving from applicants for special programs detailed information that indicates the qualifications; processing that information; relating it to the laws and the standards that have been established; and monitoring the information to see who is using it and how effective the program is.

So without question the central role of Government is an information processing role, and indeed it should be.

The issue is, where is the line between the appropriate publicly subsidized activity of Government, that is, the tax dollar-support activities; and the marketplace activities of disseminating information or adding value added to the information that is available, as the SEC was talking about earlier.

It seems to me the OMB policy statement seeks to define a set of principles that outline the balance between those tasks by requiring careful deliberation on what the costs and benefits are, what the appropriate roles are, and what the appropriate options are.

Mr. Chairman, in your opening statement that was for the record but not fully read, you asked for specifics. I think, if you look at page 2 of my testimony, you will see a number of specific cases where that dividing line between the public role and the private role is difficult to determine.

I think the illustrations indicate that, in the past, there was probably a pendulum movement on the side of too much subsidy conflicting with the marketplace, so that free a decision process does not take place.

In conclusion, it is our position that the key contribution of the proposed circular is bringing together into one place a number of diverse policies that have in fact been around for a long time, putting them together in the context of the information era in which we live, and providing an opportunity for the kind of public debate which you are having today, and which I certainly would support.

It should be done very broadly over the next several years, because one single decision is not going to set this policy; it is going to be something that evolves over time.

I would point out, for example, that the issue of cost accounting and user fees is an area that has only been barely scratched in this circular. There are a lot of issues as to what full costs should be included before the user fee is determined.

For example, is the collection cost a part of that full cost? Most of the writing that I have seen from OMB starts after the information has been collected, yet both from an agency point of view as well as from a public point of view, that cost of collection is important.

You also made a statement that we have been dealing with paper for a long time and paper is cheap and easy to deal with. Mr. Chairman, I would submit to you that in many respects electronic transfer of information is even cheaper and will soon be even easier.

Let me give you an illustration of that. Unfortunately, it is not addressed directly in the OMB circular, and illustrates, I think, the need to sharpen it up in view of rapidly changing technology.

It is now possible through digital technology to have on a compact disk, such as people are now putting in their home record players, in effect 50,000 pages of information.

Think of how inexpensive it is to distribute 50 pages of information on a disk that costs in mass production between $5 and $10 and is easily accessed. Because the digital process itself requires indexing the information on the disk, it makes it easier to access the information. Furthermore, the clarity of that information on a screen is many, many times that of the microfiche that we experience today.

I would submit, Mr. Chairman, that the cost of information dissemination will drop dramatically in the years ahead. The type of activity we see today where the statistical abstract issued by the private sector is half the cost of the statistical abstract issued by the Census Bureau, I think, is just the beginning of a process in which marketplace action on information dissemination will lead to wider public access than we have been able to dream of before.

Thank you.

Mr. English. Thank you very much.

[The prepared statement of Mr. Duncan, with attachment, follows:]

DEVELOPMENT OF AN O.M.B. POLICY ON FEDERAL INFORMATION MANAGEMENT

Testimony
of the
INFORMATION INDUSTRY ASSOCIATION

Before the
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT OPERATIONS
SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE AND AGRICULTURE

April 29, 1985

Good afternoon, Mr. Chairman. I am Joseph W. Duncan, Corporate Economist and Chief Statistician for the Dun & Bradstreet Corporation. Before joining Dun & Bradstreet, I was the Chief Statistician for the Office of Information and Regulatory Affairs in the Office of Management and Budget and responsible for national statistical policy. I am appearing today on behalf of the Information Industry Association and am accompanied by Robert S. Willard, IIA's Vice President, Government Relations.

The Information Industry Association welcomes the opportunity to appear before this Subcommittee to share some of our preliminary thoughts on the proposed policy Circular on federal information management policy published by the Office of Management and Budget in the Federal Register on March 15 (51 FR 10734). The Information Industry Association, founded in 1968, is the trade association representing nearly 400 private sector companies involved in all aspects of the collection, storage, processing and distribution of information content in the commercial marketplace. Some of our members are engaged in the secondary publishing of government documents. These firms have developed information retrieval services which include sophisticated indexing, abstracting and document delivery systems designed to help users to access government documents and the important information they contain. Others, responding to their understanding of marketplace demand, have developed new information products and services covering a whole range of subjects, some of which are included in information products and services provided by the government. Therefore, our membership has a great interest in the information practices of government agencies.

As we had earlier communicated to OMB, we believe that the development of such a policy circular should be one of the Administration's highest priorities. The need for policy attention in this area is driven by the fact that the entire information landscape is changing. Technological changes have brought about an ever-expanding number of new users of information products and services and the resultant marketplace considerations have led to the development and rapid growth of a private sector information services industry. While we certainly acknowledge that government has long had — and will continue to have — a host of legitimate information functions, we also maintain that an expanding portion of citizens' needs for information is most beneficially satisfied by the private sector. The existence of this industry demands a careful reexamination of information activities of the government and the relationship of these activities to those of the private sector.

This reexamination is of critical importance in a democratic form of government. The ability of our citizens to access information about our government has a direct bearing on their participation in the democratic process. Equally important is their ability to access all other types of information, information that has a direct bearing on the quality of life our citizens enjoy. In both cases, the information needs of the citizens, we believe, is best met by a pluralistic, competitive information marketplace. One of the fundamental goals of information policy should be the encouragement of such a marketplace.

As a first step, we believe, government information policy should be explicit and stable. The Office of Information and Regulatory Affairs is the appropriate focus for the development and dissemination of such policy. While the early activities of OIRA, following the passage of the Paperwork Reduction Act, may have focused a great deal of energy on regulatory and information collection issues, we are heartened by the apparent broadening of attention to information policy issues reflected in this draft Circular.

COMPETITION WITH THE PRIVATE SECTOR

When OMB first announced its intention to develop a circular dealing with information management policy, its Federal Register notice provided a comprehensive list of issues that could be included in such a policy document. One of these, the issue of "Competition with the Private Sector," is clearly of the greatest importance to us and — as you know — a subject we have discussed before this Subcommittee in the past. This issue, i.e., what effect government information practices have on the information marketplace and the private sector firms that operate in that market, as well as the issue of User Fees (addressed below), are concerns that have occupied IIA since its establishment in 1968. Our call for an information marketplace in which there is fair competition is not the special pleadings of an affected industry; rather it is a call for policy that is in the interest of the public at large. Only a marketplace that offers consumers a diversity of choice of information products and services, both as to content and format, truly serves the varied needs of our diverse population. Such a market can only develop in an atmosphere of unfettered competition.

Our historical work in the area of government competition has led us to the development and promulgation of a policy statement that attempts to summarize our thinking on the appropriate roles of the public and private sectors in the creation and dissemination of information. We ask that a copy of that statement, Meeting Information Needs in the New Information Age, be included in the record of this hearing.

OMB has addressed the issue of government competition in the provision of information products and services. In a memo dated September 11, 1981 from OMB Director David Stockman, and in its 1982 and 1983 annual reports required by the Paperwork Reduction Act, OMB has made it clear that it is sensitive to the problem. However, none of these statements has any "force of law" behind them, and in the absence of precise policy, agencies are still able to engage in information activities that have a deleterious effect on the marketplace.

We are not concerned with marketplace implications of government activity strictly as a hypothetical problem. Over the years, the industry has dealt with a number of government initiatives that posed serious threats to IIA member companies. In some cases we were able to have some effect and to redirect the government program in a way less harmful to the private sector, but we have not always been successful. The following is by no means exhaustive but it gives an indication of some of the problems. Moreover, we readily acknowledge that each example was far more complex, with its own degree of subtlety, and that a brief description cannot adequately convey the full implications of any of these examples:

- When the Government Printing Office began to distribute free microform as an alternative to paper documents to government depository libraries, the first set of titles offered was one that had already been placed on the market by a private sector firm, Congressional Information Service.
- The Commerce Department offered the Commerce Information Retrieval Service (CIRS), an online search service of private sector databases, which competed directly with information brokers, or retailers. Not only were prices set unrealistically low, the search personnel were comparatively ill-trained: their relatively non-productive search results left first time clients with a negative perception of the value of private online databases.
- The Commerce Department also proposed to develop a Worldwide Information and Trade System (WITS) which would have offered on a global computer network a vast array of international business information, the overwhelming majority of which was already available from private sector sources.
- The Bureau of Labor Statistics, in responding to legitimate and reasonable requests that it use electronic technology to distribute the current economic statistics it traditionally published in news release form, proposed a major information processing service that would have allowed non-government users to process their data on government provided computers.
- The Office of Federal Register, after raising the price of the daily paper copy of the Federal Register to a level which recovered the marginal cost of its printing and distribution, initiated the daily production of a microform edition at a price about 40% less than the paper copy; this new format was authorized despite the existence of a half dozen private sector publishers of the Federal Register in microfilm, including one, Capitol Services, Inc., which published a daily microfiche edition.
- The National Technical Information Service began the Journal Article Copy Service, a document delivery operation that provided photocopies not only of government produced information, but also private sector journal items.

- After announcing that it would not be able to produce a certain file based on the 1980 Census, and after a private sector company (Donnelly Marketing) announced it would make the necessary investment to produce the file, the Census Bureau reversed its decision; it did this even though the private sector company agreed to make its file available to the Census Bureau and the entire federal government at no cost.

- The Census Bureau also announced that it was not going to produce certain software that could be used to process Census data. A private sector firm (DUALabs) was established to create the software, but as its product was coming to market, the Census Bureau again reversed itself and made the software available. The private sector firm went out of business.

- The National Library of Medicine developed a database of bibliographic records predominantly based on journal articles published by the private sector, and for six years it charged all users a maximum fee of $15 an hour, far below the prices private sector vendors would have to charge for the same product. This charge was recently increased to a maximum of $22 an hour which, it is claimed, recovers the cost of accessing the system, but does not recover any of the costs of creating the information.

- The National Library of Medicine also created a software package, the Integrated Library System, which competes with the products of at least two private sector companies (Warner-Eddison Associates and Comstow Information Services). It is alleged that NLM personnel approached Comstow as potential purchasers of library software, and after they received detailed information on the software's functionality, similar design features were incorporated in ILS.

The need to look critically at this issue is spurred both by the technological developments that lead to an increasing amount of information in electronic form and by the marketplace developments that have given us an increasing number of entrepreneurs who are willing to take the necessary risks to make more and better information products and services available to the American public and the world marketplace as well.

It appears to us that the draft Circular is a significant step in addressing the problem of government competition. The Circular recognizes that government is frequently called upon to disseminate information, but it wisely puts forth a series of considerations an agency must review before undertaking a dissemination program. Section 8a.(8) states that agencies shall

> Disseminate government information products and services only where:
> (a) Dissemination is either required by law, or
> (b) Dissemination is essential to the agency's accomplishing its mission, and the products or services do not duplicate similar products or services that are already provided by other government or private sector organizations, or that could reasonably be expected to be provided by them in the absence of agency dissemination.

The Circular continues with a requirement that agency dissemination activities, that have passed the foregoing test, should then be done in a manner that reaches the right constituency; is cost effective and places "maximum feasible reliance on the private sector;" and recovers costs, where appropriate, in accordance with OMB Circular A-25. Moreover, it calls for a periodic review of the continued need for the activity.

USER CHARGES FOR INFORMATION PRODUCTS AND SERVICES

Closely related to the question of competition is the question of pricing. We think it is necessary to stress that the fundamental position of the Information Industry Association generally argues against the government's offering commercial information products and services. Many such government information activities are simply inappropriate and their presence inhibits the creation and expansion of similar private sector products and services. In such a context, the need for a discussion of pricing is nonexistent. However, we do acknowledge in our policy statement that there may be circumstances in which, "as a last resort," such products and services may be offered. In these situations, prices should be set carefully to diminish potential "competition" with the private sector. According to our policy statement, "that price should, with rare exceptions, be sufficient to recover all costs incurred in the development, production and dissemination of the particular information product."

The general requirement for implementing user fees comes from 31 USC 9701, which was originally enacted as Title V of the Independent Offices Appropriation Act of 1952. OMB policy regarding user fees is contained in Circular A-25 (September 23, 1959), which according to the Solicitation of Public Comment is also in the process of revision. Circular A-25 does not specifically address information products and services.

It is in the area of cost recovery that the OMB proposed Circular could be sharpened. While the Circular describes with great precision the cost recovery aspects of shared information technology facilities (Appendix II), it is far less precise in discussing what costs need to be recovered from dissemination programs. As mentioned above, the Circular requires that agencies "recover costs of disseminating the products or services through user charges, where appropriate, in accordance with OMB Circular A-25." However, as we have pointed out to OMB, Circular A-25 is far from precise in its applicability to information products and services. Moreover, OMB has announced that Circular A-25 is under revision. Without knowing how it may be redrafted, it is impossible for us to comment on its future applicability.

We have recommended that OMB very carefully develop a definition of "cost" that fully recognizes all the component activities that comprise the provision of an information product or service. In the Budget Reconciliation Act of 1981, the U.S. Senate adopted language that we would recommend for consideration. (It should be pointed out that similar language was not included in the House version of the Act, and the Conference Committee subsequently deleted this language.)

> The term "full cost" includes the direct and indirect costs (including overhead), applying generally accepted cost accounting principles to the United States, associated with —
>
> (i) the administrative and intellectual preparation of information products;
> (ii) the creation and maintenance of systems for the storage, retrieval and dissemination of these products;
> (iii) the storage and retrieval of these products; and
> (iv) the dissemination of these products.

(This section of the legislation dealt with the National Library of Medicine and it describes information products as "including catalogs, indexes, abstracts, citations, bibliographies, or associated document delivery.")

CONCLUSION

The Office of Management and Budget is to be commended for its efforts in implementing its information policy functions under the Paperwork Reduction Act. The Information Industry Association is grateful for the opportunity to share its views on this subject. It is our intention to file a statement with OMB before the end of the 60-day comment period. If it would be useful to the Subcommittee, we would be glad to provide a copy of this statement for inclusion in the record of this hearing. At this point, it would be my pleasure to answer any questions you might have.

Information Industry Association
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202/544-1972

Meeting Information Needs in the New Information Age

A Policy Statement

of the

Information Industry Association

Meeting Information Needs in the New Information Age

A Policy Statement
on the
Roles of the Public and Private Sectors

INFORMATION INDUSTRY ASSOCIATION
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202/544-1969

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INTRODUCTION

For its nearly 17 year history, the Information Industry Association has had an active effective government relations program, which has brought IIA members together to voice their opinion and make a difference.

Very often the issue that united us involved determining the appropriate roles for government and private sector interests in the provision of information products and services. Over the years, IIA has sought to curb the growth and avert the start of government information activities that we felt were more appropriately performed by the market driven private sector; we also strongly called for the use of private sector contractors to perform government information activities that the market would not support.

In 1983, it became obvious that IIA needed a basic statement of principle concerning the appropriate roles of the private and public sectors that sought to explain clearly why IIA was concerned about government information activities. A small task force spent countless hours summarizing the many philosophical arguments that the industry had developed over the years into a single document, a position paper that neatly captures the most important aspects of this issue. The paper was approved by our Public Policy & Government Relations Council and the IIA Board of Directors. It is now in its second printing.

I am pleased to provide a copy of this major statement for distribution to policy makers in the government and other interested people. We will continue to seek wide support in attempting to get the principles in the position paper incorporated into our national policy.

I want to express my heartfelt appreciation to all the IIA members who worked to make this statement a reality, not only those who participated in the drafting, but those whose tireless efforts over the past 17 years have breathed life into this fundamental statement of philosophy.

Paul G. Zurkowski
President

April, 1985

Meeting Information Needs in the New Information Age

The world has entered a new age, the age of information. Fostered by the explosive development of computer and communications technology, information is compiled, stored, processed and distributed in ways undreamed of a few years ago. The information revolution has replaced the industrial revolution as the moving force in transforming our world and reshaping our lives.

The ultimate impact of this revolution — the changes it creates in how we live, what we do, where we live, and how we relate to one another as individuals and as nations — can only be dimly perceived in this threshold period. Yet profound changes are taking place. If we manage them wisely, they should contribute in a major way to the economic, social and political betterment of the world in which we live. Important in themselves, these changes in information capability may be even more important to society through the multiplier effect they will have on progress in countless other fields of human endeavor.

How we let this new world evolve, and the controlling public policy that we establish, can substantially affect the result. We believe that the cornerstone of information policy should be primary and increasing reliance on the private sector and the information marketplace rather than on the public sector for providing information products and services. Not only will such reliance provide the most effective response to society's diverse and expanding information needs, but it will also bring about that result in a way that will safeguard and enhance essential freedoms.

It is not accidental that the Constitution, by specifically allowing "copyrights" whereby authors receive exclusive rights in their works, encourages reliance on private rather than government efforts in creating and providing information products and services. Nor is it accidental that the first among the amendments contained in the Bill of Rights of the Constitution, which taken together provide the strongest protection of individual liberty in human history, stays the hand of government from "abridging the Freedom of Speech, or the Press," or, to put it in today's context, interfering with the compilation and dissemination of information by its citizens. Indeed, the First Amendment might well be called the "information" amendment.

In today's world the message of that amendment is not that government has to cease all information activities. Since the early days, and generally with useful purpose, the government has been involved with the creation and distribution of information critical to our national interest, and will continue to be. Census data and reports of Congressional proceedings are but two examples.

On the other hand, in the information world of tomorrow with its radically new methods of meeting society's information needs — methods undreamed of 200 years ago — the underlying premise of the First Amendment surely means that government should not play the dominant role in providing information nor a domineering role in the control of information developed by others. The two roles are interrelated. The right of the people will be best secured and the essential character of our free society more rigorously preserved and enhanced if the technology driven revolution is allowed to develop with these principles kept constantly in mind.

Private sector information capability is expanding exponentially. The competitive drive to anticipate and fulfill user needs is intensifying. These needs are best integrated in the give and take of the marketplace.

Public policy in this regard has two elements. One is the regulatory framework that government seeks to impose on the information/communications industry. That framework should be minimal and receding as information sources and methods of distribution proliferate. The other element in information policy is government involvement in the information marketplace which results in "competition" with the private sector. Such competition exists where government creates or provides information products or services, particularly enhanced products or services, comparable to those which have been or could be readily created or provided by private sector sources. This competition should be minimized; that is, where the private sector is meeting or can meet an information need, the government should not compete.

Important at any time, a recognition of this basic principle is particularly vital today as our society moves through the early stages of the information revolution. The final pattern of the informational relationship between public and private sector will be set not by a single sweeping edict, but rather by the day-to-day application of this basic principle to innumerable and perhaps seemingly inconsequential situations where competition has arisen or may arise. There should be an ongoing presumption in favor of the private sector, a presumption which may be rebuttable in a limited number of situations.

If this principle is consistently followed in the innumerable and yet unforeseeable situations that are sure to arise, our information system will be strengthened decision by decision, and society's enjoyment of freedom will be steadily enlarged. The peoples' need for information will be more effectively met.

The specific elements of a guiding policy relating to public sector or private sector information competition should be as follows:

1. Government should not develop and disseminate new information products or services that compete with those already available from or planned by, or which could be provided by, private sector sources. Nor should new formats for existing government information products or services be developed by government when private sector sources are equipped to offer or are already offering such formats. Government information products or services currently being offered should be carefully reviewed periodically to make sure that continued production and dissemination serve a need that still exists and that is not being met or cannot be readily met by private sector sources and are done in a manner that diminishes potential "competition" with the private sector.

2. Where there is a genuine, demonstrable and critical need for an information product or service not currently provided (or likely to be provided) by the private sector, government should take the following steps in order of priority:

First, encourage the private sector to meet the need;

Second, provide secondary inducements for the private sector to meet the need through such mechanisms as subsidies, loans, grants, tax credits, etc.;

Third, if the private sector cannot fulfill a demonstrable and significant information need, contract out to the private sector the development of the needed product or service;

Fourth, when as a last resort to meet the need the government does produce such an information product or service, make it available in a way and at a price that diminishes potential "competition" with the private sector. That price should, with rare exceptions, be sufficient to recover all costs incurred in the development, production and dissemination of the particular information product.

3. All information products or services provided by government should be reviewed periodically in the light of expanding private sector capabilities with a view toward, wherever possible, encouraging the private sector to meet information needs by becoming involved in the production and distribution of such products and services.

☆ ☆ ☆

If these policies are adopted now and carefully adhered to in the years ahead, the information society now evolving will enhance the freedom as well as contribute significantly to the economic well being of people everywhere.

This position paper reflects the efforts and concern of a large number of individuals from the membership of the Information Industry Association. Special recognition should go to William P. Giglio (McGraw Hill), 1983 chairman of the Public Policy & Government Relations Council, Charles H. Tower (The Dun & Bradstreet Corp.), 1984-85 chairman, and Peggy Miller (Kaye, Scholer, Fierman, Hays & Handler). IIA staff support was provided by Robert S. Willard, Vice President, Government Relations.

The Information Industry Association represents nearly 400 companies involved in all aspects of the collection, storage, processing and distribution of information *content* in the commercial marketplace. The Association was established in 1968. Its offices are in Washington, D.C., three blocks from the United States Capitol.

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Mr. **English**. Mr. Duncan, the circular distinguishes between access and dissemination. Do you find that a useful distinction?

Mr. **Duncan**. Yes, sir, I believe it is useful.

I would like Bob Willard, who has been thinking about the distinction, to address this.

Mr. **Willard**. Thank you, Mr. Chairman.

I am very pleased with the distinction. I think it allows us to approach information policy in a much more rational way.

I think we have been blessed in this Government with a rich tapestry that allows access to the products, to the intellectual products that have been developed as a result of taxpayer dollars. Part of it is through active dissemination programs. That is where the Government makes a decision that information has to reach a wider audience, that it is not created to be used inside the agencies but it does have to get out.

It has a number of mechanisms for accomplishing this. There is the GPO sales program. There is also the National Technical Information Service, which has a publishing program but essentially is on-demand publishing. It says, in effect, "We are set up and ready to give you a document that we think you might want; you have to ask for it."

But then, in addition to that, we have access to a whole range of additional information, and this subcommittee knows that better than any other organization on the Hill through the Freedom of Information Act.

Fran Buckley indicated that that is a complex and sometimes costly mechanism, and I would agree, except that the presence of the Freedom of Information Act, which affords access, also creates an environment or spirit in which Government agencies realized that they have to make the information available anyhow under force of law. So they might as well make it available. And frequently, all it takes is picking up the telephone and calling an agency and you get the information you need without any formal Freedom of Information Act procedure.

I think this is all part of the spirit. So it is a spectrum that ranges from a very formal publishing program to a very easily managed phone call to get information. I think it works.

Now, there is the additional aspect that we tried to weave into our testimony, and that is that frequently Government's information objectives are met by the Government not having to take any action at all. By simply creating the information and then having an environment in which entrepreneurs can make decisions and take actions, the information needs of the public at large are met.

That is why I am very pleased we are sitting at the same table with our colleagues from the library community because we are all involved in the same business; that is, making information available to the public at large.

There will be a lot of people who are interested in what goes on at this hearing. Now, within the next few days under the rules of the House, they can come into your subcommittee office and read the transcript. That is a pretty difficult thing to do. They can wait 3 or 4 weeks, or months, to see the printed hearing, and either get it by ordering it directly from your subcommittee or getting it through GPO or going to a depository library.

In the meantime, the private sector will have reported it, and in tomorrow's paper you will be able to read about this hearing.

So I think we see again the private sector responding to opportunities to create products, information products, based upon Government information, and it works.

Mr. **English**. Do you have any objection to the circular's position on access?

Mr. **Willard**. No.

Mr. **English**. No problems?

Mr. **Willard**. I think it says it has to be in accordance with the law. We certainly can't disagree with that.

Mr. **English**. Mr. Duncan, I want to offer an analogy between information and fire. Once you have a fire, you can give it away to others indefinitely without diminishing your own supply. Information is pretty much the same way. No matter how many people copy the information, you still have every bit that you started with. How does this characteristic of information affect its pricing?

Mr. **Duncan**. Mr. Chairman, first, I worry a little bit by the thinking of information as a fire, because I view fire as destructive, and I view information as productive, but setting that aside, the reusable side of it is certainly correct.

And the thing I think we have to remember when we look at information is information does not become available in any costless manner. There are costs of collecting information, organizing it, and processing it, as well as accessing it.

My own company spends $250 million a year collecting information which we resell at the end of the year. We hope we have received more revenues than our costs of collecting and disseminating that information.

The pricing of information that we typically follow, of course, is to relate the value of that information to the user, so some information is sold at a loss, in terms of individual data elements, other information is sold at a profit, because of very small set of people find it highly valuable in a short-order time.

My job within my own company is to disseminate agreeing statistics, which is our information which we give away, because we want people to know about the information. We can only do that because the details behind that are valuable to many of our customers.

So I don't think that the reuseability criterion by itself is a basis for determining what pricing policy should be.

Mr. **English**. In the long run, can you set a price for information that is much higher than the marginal cost of distribution?

Mr. **Duncan**. By definition, if there is a profit, that will be the case.

Mr. **English**. I said much higher.

Mr. **Duncan**. Well, I mean, is this going to take us back to the earlier discussion you had about the SEC. For the institution that is moving millions and even billions of dollars, paying $40,000 or $50,000 for some information is well worth it.

Certainly to the contractor who's collecting that on a broader base, his cost is going to be less than that. There will be an enormous profit there. But the question is, "What is the area under the curve?" I would submit that the way that this marketplace works on all activities is that the things that survive in the marketplace are those for which there is a return on investment.

There are many failures. Look at the computer industry today, and those people who have invested their energies in developing the software. Because of the many personal computers out there, some of them haven't made it. Other people have had better processes to survive in the competition that keeps our economy active and alive.

I think that is a good characterization of our society.

Mr. English. Mr. Buckley, if you had the right to make one change in the draft OMB circular, either eliminating one provision or adding one, what change would you make?

Mr. Buckley. I think my primary change would be one in the direction of changing the emphasis of the circular. There are 10 pages in the circular, and there are six words that cover dissemination programs required by law such as the Depository Program, which provides access to so many people. The emphasis is skewed, as far as I am concerned. I think there are other major problems, and they go to the question you asked the previous speaker about the definitions of access and dissemination.

Mr. English. In deciding on publication cutbacks, what specific procedures would you recommend that agencies should follow?

Mr. Buckley. I think that a public review process that require notice to the public regarding the possible elimination of either an information collection activity or a dissemination activity would allow for a broader input of information regarding the use and reuse of the information and the need for it. That would be helpful to the people who need to make the decision. I also think there should be a broader group of people who are involved in those decisions.

In the Depository Program periodically we see notices from agencies saying that a publication is no longer going to be distributed because it is not of public interest.

It can be something that was selected as all Government publications need to be, by 400 or 500 hundred libraries which have a significant amount of work to do for every publication that they select in order to make them available to the public.

They don't do that just because they like to fill their shelves. They do that because there is a need for that information in their community and they want to have it available to the patrons.

Mr. English. You mentioned a number of publications that have already been eliminated or cut back. How do you know which publications are most used by your clients? Do you have any formal program to determine this use?

Mr. Buckley. There are no formal programs. I think you can determine use generally by the number of libraries which select such items. In each library, we recognize the amount of use given to items.

At the Detroit Public Library, for example, we buy 30 to 50 copies of some government publications in addition to the one copy we receive on deposit, so that we can place copies of things that will be in great demand or that are needed for reference use in all of our branches and in multiple departments.

There is an individual judgment based on the need in the particular community by each library for the number of copies that they would need of the material.

As I alluded to, however, there is a cooperative agreement among depository libraries for interlibrary loan, so that if you did not select a document that was requested in your library, you could borrow it from another depository which received it.

So there is a backup mechanism for obtaining the material or the information if you don't have it in your particular library.

Mr. ENGLISH. Mr. Miller?

Mr. MILLER. Mr. Buckley, when you get right down to it, is it really possible to cut down on the dissemination of obscure or useless reports without restricting the flow of information, the free flow of information?

Mr. BUCKLEY. Well, we have had long discussions in the library community about the difficulties of managing the output of the Federal Government, the number of publications that come, and the complexities involved. But every time we start talking about a publication which someone wants to nominate as the most obscure unused publication that should not be sent to libraries, there is someone else to say but they just used that last week with a patron, whether it is a study by the Corps of Engineers on building a dam, or a study of the forebrain of the white albano mouse.

There are very specialized publications that come out, but we have people, companies, and institutions who need to have access to that information.

At the Detroit Public Library, a major research library, we see not only average citizens and students, we have General Motors and Ford and other companies relying on our collections of information, Government information as well as other information.

So, we see the broad benefit of the Depository Program, that allows for the publications to be produced in reasonable quantities based upon their need, so that, indeed, the more obscure or more technical materials are distributed to a base number of libraries.

The kind of program that we would like to see adopted is one that allows for the flexibility that we all want. We aren't saying the Government needs to publish a million copies of some obscure publication.

Publish it and make it available in base systems such as the Depository Program where it will be accessible over a long term for public access, allow other Government sales programs and the private sector to republish as needed.

We, too, want to see a multiplicity of channels and programs for dissemination, but we don't want to see an exclusion of channels of access. Unfortunately, my reading of the OMB circular would lead me to believe that there would be a definite skewing of distribution only through the private sector. The six little words that talk about dissemination as required by law, I am afraid as they are interpreted by agency managers, will not be recognized in their full import.

I can't imagine that every agency publication manager goes pouring through the United States Code looking for all of the laws which may require dissemination and I think that the circular as it is proposed is not ample to provide instructions to those managers.

Mr. MILLER. Thank you.

Ms. COOKE. I just want to make a point for Mr. Miller's sake. I was out in Seattle meeting with the Washington Library Association last week during National Library Week, and meeting with some of our Government documents librarians, I was reminded there of something I hadn't really thought of in recent times, that among the various users of government documents, perhaps some of the heaviest users on a regular basis, are the people in municipal services. They come in, get hearings records, and Government reports. These are regularly used, and I think something we haven't touched on is the whole concept of federalism as we begin to look at the use of documents and their cost. It is going to be very costly if we put everything on a bookkeeping basis to every level of government, starting with the Federal level having to buy back many of the things that they are contracting out.

Mr. MILLER. Thank you.

Mr. ENGLISH. Thank you, Mr. Owens, do you have questions you would like to ask?

Mr. OWENS. Thank you very much for the opportunity.

Mr. Duncan, information is a record of either a phenomenon that is observed, or it is a record of decisions that are made, and the Federal Government in both cases is probably the world's greatest producer of information either from the phenomena that are observed, would you call it collections, or from the decisions that are made at various levels in the Federal Government.

We produce more information than other entities. You said the marketplace decisions and the mechanisms of the marketplace should rule supreme in this whole matter of dissemination of information. What kind of system do you think we should have to get a fair price for the products that the Government generates?

If the information industry is going to sell information, should they not pay the Government for the raw material, for example, the court decisions that are made, if those court decisions have already been made by the taxpayers because they paid the salaries of the judges, paid for the administration of the courts, and when decisions are finally made, the taxpayers foot the cost for that.

Now, if decisions are made and the only the way they are going to be available is through commercial vendors, the people can't purchase that information any other way. So it is going to be made available only through commercial vendors.

What should the commercial vendor pay to the Government for that information? What is a fair system for determining that?

Mr. DUNCAN. My statement had two parts to it. One was, I said the priorities on information dissemination and what is needed by our general public are best determined in the marketplace. Because of the diversity of interests and needs that are expressed, some people assume that every court decision needs to be recorded; some entrepreneurs may go and figure out a system for collecting and disseminating it if it is not available through another mechanism.

I also said, as the second part of my presentation, that there are many government functions that are fundamental information processing. Certainly, the courts are one dimension of that whole process. Holding hearings is an information function of the Government.

The question is, how far the Government responsibility goes in disseminating or in effect, marketing that information? One could, on behalf of the subcommittee, I suppose, set up a subgroup whose task it was to make sure everybody in the country got a copy of this hearing and to followup, by advertising in the newspapers, and seeing how many people wanted it published.

It may be a hardbound edition, so it looks nice on the library shelf. If it is paper copy, they may think it is a low-quality set of hearings. My point is that defining where that transition lies is a very difficult process. I see the OMB circular as a mechanism to focus the archiving issue, the collection issue, and the user fee issue in one central concept of policy, and I certainly am not capable to sit here as a witness to define for you where all those lines are, nor do I think OMB can do that either.

I think what you need is a public process of review and oversight. My own personal view is that OMB is the most logical place to have that oversight in the executive branch of Government, because of its many concerns from paperwork reduction on the public, to the budget, to general policy.

I also believe——

Mr. OWENS. Cost cutting and cost recovery functions only. If that is the case, then you take the argument of cost recovery to its natural conclusion. If we lease Federal land and somebody drills for oil, they pay a royalty or they pay for every barrel of oil they produce.

If we give you information provided by the Federal Government, should this commercial provider of that information not pay the Government a royalty for every time that information is sold?

If you carry it to cost recovery, it would be until the costs are recovered?

Mr. DUNCAN. Congressman, I understand that, and in fact, I think one of the user fee issues will be, for example, as the SEC said in an earlier part of the hearing: the cost to the wholesalers, to the redistributors, and how does that relate to the cost of the initial collection.

Those are fundamental issues. I don't think you can write them out in a circular and define them—my point is that there needs to be an oversight process for the executive branch to consider those policies.

Likewise, the point I was trying to make before you made the other statement, was that there needs to be oversight in the Congress and there probably needs to be a public nongovernmental oversight function, either groups like the Library Association, IIA and others, to all three of them dealing with the individual specific cases as they come to fruition.

I think these are very complicated issues. I sat for 8 years worrying about what should be our priorities in the Federal Government for collecting general-purpose statistics, and let me just state for the record that it is very, very hard to find out a priori what information of a statistical nature people want to have.

For example, we had very little information on energy prior to the oil embargo, and then we invested a vast amount of effort in trying to get some of that information. We found that many people didn't use it, and now we revert back to the position somewhat between what we had before the embargo and what we had in the 5 years after that.

Those were in effect government- and marketplace- resolved issues, first of the appropriate need for information; second, dissemination of information.

Mr. OWENS. I don't want to abuse the committee's generosity and take too much time. You have just said you think the best agency, the best unit in government, the Federal Government, to carry out this function is OMB. Are you saying that within the entire apparatus of the Federal Government?

Mr. DUNCAN. I am saying that OMB is the appropriate place for the policy and principles to be put together in an integrated way. Even in the draft circular that is before us, OMB has recognized it does not have the resources to do many things. It has delegated a number of aspects——

Mr. OWENS. Can you pinpoint exactly who has the responsibility for deciding what information is going to be produced or curtailed or put into electronic format? I have a hard time reading the OMB circular to pinpoint exactly who makes the decision, who is it who decides that monthly labor reviews are going to be done on a quarterly basis now instead of a monthly basis?

I haven't been able to find out exactly who made the decision whether it is forced on the agency by OMB ahead of time by saying you have to cut your budget down to a certain level and you make a decision about how you are going to cut it or whether they send out some information suggesting what you should cut?

If that decision is being made somewhere else, should we, the private sector and public sector focus on that unit and try to get some kind of criteria established within that unit and the best qualified people established there, in order to serve both your interest and the private sector and public sector?

Mr. DUNCAN. Fundamentally, Congressman, the place that the decision process starts is the Congress. Almost all information collection and processing activities are the byproduct of a piece of legislation that authorizes something. We have some exceptions to that; the Constitution mandates a census.

Mr. OWENS. I noted that there are some questions about interpretation of the Paperwork Reduction Act, and exactly how it is being interpreted with this circular. Let's not deal with the Congress, let's talk specifically within the executive branch. When those specific decisions are made, what items shall be in electronic format only, and which items shall be both in electronic format and in paper format, maybe in microfiche, who is going to make those decisions, and why are you so certain that OMB is the best agency to get the policy together and decide who makes those decisions?

Mr. DUNCAN. There are two parts to the issue. One is who decided the priorities on individual activities, and that is the head of the agency. It is spelled out in the circular specifically.

The OMB role is that the general policy under which the agency head operates. Let's take the Monthly Labor Review, which I, incidentally, am an avid reader of, and have been for 25 years.

It is a very, very valuable technical publication that provides a vast amount of detailed methodological information behind individual data series that we read about every day in the newspapers.

It also provides interesting and analytical results of those surveys. It is not, however, the basic way in which the consumer price index or the producer price index or series are released.

The information in the Monthly Labor Review is quite lagging from the release of that information which is available through press releases, and now BLS has electronic delivery systems, so you can literally, as a member of the public, get instant access to the information at the same time it is available to the press.

So, there is obviously a judgment that needs to be made by in this case, probably by the Commissioner of Labor Statistics, as to the best place to put resources for dissemination and publication, within the limited budget of that agency.

She, I am sure, has made a decision that the top priority is to get data out in a timely fashion and to let the details of the analytical background come out quarterly. The full information will still be available; it is just that there will not be a publication every month.

That is an agency head decision, and I would very seriously doubt anybody in OMB would be presumptuous enough to think to go into that decision and try to make that type of choice.

Mr. OWENS. I don't doubt that at all. One more question I would like to address to Mr. Buckley. In this circular, if I read it correctly, the triennial reviews that will be conducted, maybe the agency head has some decisionmaking powers from year to year, although that is not yet clear.

How much pressure is on and how much does the budget process squeeze that agency to make a decision? There are triennial reviews called for as specified in the Paperwork Reduction Act. Those triennial reviews will be conducted by some unit somewhere in the General Services Administration.

I am curious to know, who is the head of this unit in the General Services Administration who will be in charge of the triennial reviews? What kind of qualifications would you think the people in that unit would have to have in order to make these kinds of sweeping decisions about what an agency should be doing with respect to its information generation?

Mr. BUCKLEY. Well, I don't want to sound flip, but I think the person should have been a reference librarian serving the public for several years to see the broad range of information that is required by the public, and uses made of the information.

The decisions has, as you have noted, very broad ramifications for the public.

Mr. OWENS. Would you say they would have to have something like the range of expertise you find in a place like the Congressional Research Service? I am not saying that they should have the job, but the kind of expertise they have to fall back on seems to me appropriate for a unit that makes those kinds of decisions.

Mr. BUCKLEY. One needs a broad range of experience in accessing and using Government information to supply requests and answer the diverse questions that occur. CRS is one place——

Mr. OWENS. They specialize in each one of the subject areas——

Mr. BUCKLEY. I think the idea of a public process that allows comments from other users is also essential. I don't think any one person is going to be able to know all the uses to which the information may be placed, and I think that it is essential to have proposed cuts known by the public at large.

One of our greatest problems in terms of dealing with this issue is collecting the information about what has been cut or what is under consideration for elimination. There is no single place for that information to be announced.

Mr. OWENS. Thank you, Mr. Chairman.

Mr. ENGLISH. Thank you very much, Mr. Owens.

Mr. Miller, do you have any further questions?

Mr. MILLER. No.

Mr. ENGLISH. I want to thank our witnesses.

Mr. Willard.

Mr. WILLARD. If I might, there is just one additional thing I would like to add for the record.

As has been consistent in our testimony, we argue for a primary reliance on the private sector. I think what Congressman Owens said, the market should rule supreme, is not a fair characterization of our total belief. The marketplace is the first way information needs can be met, but the marketplace isn't always going to meet the needs, and it is at that point that then the political process steps in and says OK, even though people aren't willing to buy this, we as public policymakers say there is an overriding public interest, and we are going to make sure that this is available, and I think the OMB circular sets up a rational policy mechanism for accomplishing that.

It says, first, is it already being done or is it reasonable that it can be done if we are not doing it? But if those questions are answered negatively, then the next step is to go ahead and do it.

And they add an additional safeguard, that is they require a periodic review to that a system isn't locked into place from that point forward, that 5 years from now the technology may be all different and the Government may have in the past set up an information activity, but now the technology is different, it may not need to continue to invest taxpayer money to do it, the marketplace may support it.

Mr. ENGLISH. Thank you.

Mr. WILLARD. As I was sitting listening to the testimony at the first part of this hearing, I was on the edge of my chair wanting to share this, because in my mail this morning was Forbes magazine, with a cover story about electronic investing. It asks, is it just another computer game? The five-page article describes many of the presently available information services to support the investment activities that Chairman Shad had on page 20 of his testimony, to be implemented in EDGAR.

They are already in place. When your pagers went off, he said, "If EDGAR were around, you would be able to receive stock quotes." There is a sidebar story about all the electronic stock quotes transmitted over radiowaves that are available right now.

So I think the marketplace is responding to the needs of the American public. It isn't perfect; there will still always be a requirement for the public sector to step in and meet the needs of those who are either disadvantaged, or for some other overriding public interest. I think that the recommendation that the American Library Association has put forward is one that we would be in wholehearted support of, and that is a mechanism for knowing not only that something is going to be done away with, but also that something is being proposed.

The more open discussion about information activities planned for in the Government, either additions or subtraction, the better off we all would be.

Mr. ENGLISH. Thank you very much, Mr. Willard.

We will be submitting additional written questions to all of the witnesses today, so we would appreciate a timely response to those. Again, I want to thank our witnesses for their appearance. Thank you very much.

There will be additional hearings on electronic information systems, and they will be announced at a later date. We will recess subject to the call of the Chair.

[Whereupon, at 4:05 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

ELECTRONIC COLLECTION AND DISSEMINATION OF INFORMATION BY FEDERAL AGENCIES

WEDNESDAY, JUNE 26, 1985

House of Representatives,
Government Information, Justice,
and Agriculture Subcommittee
of the Committee on Government Operations,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:05 p.m., in room 2203, Rayburn House Office Building, Hon. Glenn English (chairman of the subcommittee) presiding.

Present: Representatives Glenn English and Gerald D. Kleczka.

Also present: Robert M. Gellman, counsel; Euphon Metzger, clerk; and Gregory Kilgore, minority professional staff, Committee on Government Operations.

Mr. English. The hearing will come to order. This is the second in a series of hearings on electronic collection and dissemination of information by Federal agencies. We are continuing our review of the effect of the new computer and communications technology on Government information activities and practices.

In April, the subcommittee took a look at SEC's EDGAR system for collecting and disseminating securities filings. The controversy over EDGAR continues. I note that the Energy and Commerce Committee has expressed the opinion that EDGAR needs statutory authorization before implementation. It will be interesting to see where that leads.

We are going to begin today by considering the proposal of the Federal Maritime Commission to establish an automated tariff filing and information system. There are many similarities between the FMC's proposal and the SEC's EDGAR system. Both require the electronic collection of large volumes of data now stored on paper. Both provide users outside of the agency with access to information.

One of the interesting aspects of both systems is the combination of internal administrative and external dissemination functions. Both agencies want other users to pay all costs of the systems including the cost attributable to internal administrative functions. Requiring the users of information to pay internal operating costs through user fees is potentially troublesome.

The proposed FMC system is also interesting because there are already companies providing automated tariff collection and dissemination services. The presence of these companies distinguishes the FMC's tariff system from the SEC's EDGAR system. In the case of EDGAR, it does not appear that there are any privately offered services with comparable features. In order to explore the potential conflict between the FMC and the private sector, we will also be hearing today from some of the companies offering tariff automation services.

Our final witnesses at this hearing come from three agencies that have developed electronic dissemination systems for press releases and other agency data. These simple dissemination-only systems provide some different issues. We will be comparing and contrasting the different methods used by the agencies to make data available.

Before we start, I want to make certain that my own position on automated information systems is clearly understood. In general, I believe that these systems have great potential to make the Government more efficient and Government data more widely available. It is not my purpose at these hearings to question the value of automation.

My concerns about automated information systems are how they will be operated, who will control the data, and who will pay the bill. These are the questions that I will continue to ask. I do not want anyone to misinterpret my questions as being in opposition to automation. At the same time, I do not expect to be told that automation is so wonderful that the details are not important.

Our first witness today will be Mr. James J. Carey who is the Vice Chairman of the Federal Maritime Commission. Mr. Carey, we will let you introduce the people who are accompanying you.

STATEMENT OF JAMES J. CAREY, VICE CHAIRMAN, FEDERAL MARITIME COMMISSION, ACCOMPANIED BY WILLIAM JARREL SMITH, JR., DIRECTOR OF PROGRAMS; RONALD D. MURPHY, SPECIAL ASSISTANT TO THE DIRECTOR OF PROGRAMS; AND JOHN M. BINETTI, OFFICE OF THE GENERAL COUNSEL

Mr. CAREY. Yes, sir. Good afternoon, Mr. Chairman, and thank you. My name is Jim Carey, and I am the Vice Chairman. With me today on my left is Mr. Jerry Smith who is our Director of Programs. On my right is Mr. Ron Murphy who heads up the working group for our Tariff Automation Committee. And on my extreme left is Mr. John Binetti from our General Counsel's Office who has handled the legal work for our committee thus far.

We sincerely appreciate the opportunity to testify before you this afternoon on a matter that we feel is of major importance to both the smooth functioning of Government and the economic efficiency of the maritime community; namely, some manner of automating tariff filing to bring our industry in consonance with the rest of the international business world.

The issue of tariff automation is one which the maritime industry and the Commission has been cognizant of for quite some time, but for a variety of reasons the subject of automation has not been pursued in the past. I think that we have now reached the point where not to do so would place the Commission's management responsibility and judgment in question.

We currently manage one of the largest public data bases in the world containing the tariff publications of all ocean common carriers in the foreign and domestic offshore commerce of the United States. These tariffs are basically price lists, company catalogs so to speak, and are mandated by section 8(a) of the new Shipping Act of 1984 which requires that these tariffs be filed at the Commission.

Tariffs are not simple price sheets. Rather they are complex documents which contain the rates, charges, and all the shipping line's rules for packing, and size, and weight, and so forth for carrying goods via ocean commerce. The tariffs contain rates for each commodity that a carrier transports, and it lists them between the stated geographical points. And in some cases, there are three or four pages of rules which govern the application of freight rates on a given shipment.

By law, the carriers are prohibited from charging rates different from those on file at the Commission, and thus the tariff stands as a benchmark upon which to measure illegal rebating and to carry out the enforcement mandates assigned to the Commission by the Congress.

In fact, tariffs form the informational hub of the ocean transportation industry, because they are used by importers and exporters to compare freight charges for the shipment of goods. They are used by carriers to transmit prices and rules and regulations to all of their sales offices as well as to their shippers, and in fact to monitor the prices being charged by their competitors.

They are used by freight forwarders and nonvessel operating common carriers to determine available freight rates to them. And finally, they are used by the Commission to carry out our congressional mandate through the analysis of rate patterns, the assessment of the competitive conditions within given trades, and to generally carry out our various surveillance and enforcement responsibilities.

There are several reasons that we feel drive the need to finally automate tariff filing. More recently, section 18(a) of the new Shipping Act of 1984 mandates that the Commission for 5 years collect and analyze information on increases or decreases in the level of tariffs.

This is literally impossible to do without the availability of automated information simply because of the immensity of the data base involved.

Second, the tariff information itself has a great deal of economic and competitive value to shippers, and carriers, and other importers and exporters in the industry. The ability to file, and retrieve, and evaluate tariff information has the potential of producing significant economies in the private sector, and quite frankly in America's ability to compete in the world market.

And then third, the sheer volume of paperwork at the Commission is making it increasingly difficult if not humanly impossible to carry out our congressional mandate to examine and file tariff as they are received as well as analyze the data that they contain.

Like most price lists, tariff rates are constantly changing as new services are added or as new commodities are added, or as the natural dynamics of competition and the free market system dictate changes. Today we have roughly 4,500 tariffs on file at the Commission, some literally the size of the Manhattan, NY, telephone directory. And each time a change is made, a new page is filed.

This year, approximately 600,000 pages will be filed with the Commission reflecting over 3 million separate rate changes. And as the tempo of the international business arena has increased, there has been a steady increase in the number of tariffs on file at the Commission and the volume of annual filings over the past 20 years.

In 1965, there were only about 2,300 tariffs on file, and there were some 8,400 tariff pages of changes that were filed during that year. But with the increasing deluge of paperwork filed at the Commission with the 20-year change from 8,400 pages to over 600,000 pages, it has become overwhelming.

Not only that, but the Commission's maintenance of tariffs is in my opinion currently accomplished in an outmoded fashion of manually inserting new pages and reprinted pages into three ring binder notebooks which are then kept open for public inspection. I can only compare this operation to the telephone company reprinting the page of a directory every time that a telephone number is changed or a subscriber is added.

The value of tariffs to the American public, both shipper, consumer, importer, and exporter is perhaps best reflected by the value of cargo moving under these ocean tariffs and the actual physical number of shipments.

In 1983, the total value of cargo carried in the U.S. oceanborne foreign trade of both imports and exports was some $267 billion worth. And well over half of this is transported in the liner trades and is thus governed by the tariffs that are filed with the Commission.

We roughly estimate that some 12,000 bills of lading are prepared each work day representing transactions or shipments under these tariffs. In the United States/Japan trade alone, we estimate that there are over 1 million transactions annually and between 150,000 and 200,000 in the United States to Great Britain trade.

The average commodity value of just one of these shipments is estimated at approximately $50,000. And this all results in an annual freight revenue from commodities moving under these tariffs of $12 to $14 billion for the total maritime industry of which approximately $3 to $3.5 billion accrues to our own U.S. flag carriers.

Because of these huge dollar values and its obvious economic and marketplace importance, this rate and tariff information is being constantly copied and dispatched by wire, post, and courier by commercial companies to customers with particular shipping rate and route inquiries.

And simultaneously with providing their tariff filings with the Commission, these carriers are also attempting to place this rate information into the hands of their customers, and notifying their internal billing people and so forth as they are also attempting to acquire this same information on competitive steamship lines who have a need to keep their own rates competitive.

In 1983, we conducted a survey of industry views regarding tariff automation. That survey reflected extensive industry support from both shippers and carriers for the concept of tariff automation supported by a reasonable user fee. And I would add that there were also some concerns expressed.

And these included concerns about cost, the ability to retrieve only selected information, and the lack of a standardized commodity classification system in order for automating equipment to efficiently handle the almost infinite number of trade route and cargo combinations.

We followed this study with the publication of a notice in the Federal Register to which there were some 31 comments received in response to that notice. And many of them raised significant issues both of a policy and a legal nature that we felt should be addressed.

So after a considerable amount of staff work on how best to proceed, in September 1984, our then-Chairman Alan Green established a task force under the chairmanship of myself to develop a systematized approach and a development plan, and to proceed with an effort to determine how best really to approach our entire tariff automation problem.

Operating from the perspective that the vast majority of the use and value of tariffs accrues to the industry rather than the Commission, Chairman Green adopted certain goals which he was hopeful an automated tariff filing system would achieve, and I have listed these.

They are, one, that we should try to determine if the automated system could be operated by the private sector. Two, to determine if the system could be financially self-sufficient through the assessment of user charges for access to the information. Three, to determine if access by the Commission could be without cost. Four, to determine if the integrity of this system could be ensured by the Commission through the development and ownership of software which would control entry into the system.

Five, to determine if a means could be constructed to minimize the monopolistic control of a single company operating the system, and if efforts could be made to preserve existing satellite companies already in this business and still engaged in the dissemination of tariff data.

Six, to determine the feasibility of the premise that contractual arrangements for electronic filing would not curtail the ability of the public to have access to tariff documents now routinely made available in public document rooms or otherwise.

Seven, to determine if a system could be devised whereby contractual arrangements for electronic filing systems would not interfere with public access under the Freedom of Information Act.

Eight, to determine if the burden imposed upon tariff filers to comply with the technical requirements for filing tariffs in an automated system could be minimized.

Nine, to determine if any system exists or could be developed whereby the Federal Maritime Commission would retain the final authority to reject filings that do not comply with agency requirements, and to determine if the public availability of information pursuant to the Freedom of Information Act and other statutes was any problem.

Ten, to determine if an electronic filing system would be able to maintain historical records that could be retained, then retrieved, and reproduced for legal evidentiary purposes that we would need, and to comply with governmental records retention requirements.

Eleven, to determine if the electronic filing system could be designed to prevent unauthorized modification or tampering with the data, and to preserve the integrity of tariffs within the data base, and yet allow the identification of errors and authorize their correction.

And then, finally, to determine if such a system would still provide that all fees for the use of the electronic filing system either for the filing of documents, or retrieval, or reproduction would be reasonable and not deter or impair public use of this information.

I am sure that you recognize some of these, Mr. Chairman, because we got them from questions that you in fact had raised a number of years ago.

Now these are an extensive array of goals that contain some inherent conflicts on their face. We saw early on that their nature and complexity required that we carefully evaluate the market for tariff information, and work closely with the maritime industry in determining how our mutual goals of industry and Government could be achieved.

Earlier this year, the Commission sent questionnaires to a cross-section of the maritime community, and we are currently in the process of establishing what is for us a first-ever industry advisory committee. And in April of this year, we published a notice in the Federal Register announcing our intent to establish that advisory committee, and soliciting comments about the committee and how it should be structured as well as inviting volunteers to participate in that committee.

And we are now in the process of evaluating the responses and plan, in fact, to form the committee itself within the next 2 months.

It is our analysis that the next logical step for us, because we do not have the technical expertise inhouse to do it, is to contract for a feasibility study that will evaluate and analyze some of the various alternatives that are available to us that will answer some of these questions and their cost, and perform the necessary market research to evaluate the probable success of all of the various options that we might come up with.

And we would look at accomplishing this over the next 10 to 15 months, and then I think that we will have some answers on which to determine just how, or even possibly if, we move forward. And once this is accomplished, I think that we then would be in a position to determine which options we can pursue. And I can assure the committee that we would then be more than pleased to come back and advise you on what we have learned and what directions seem to make sense to us at that point.

I would like to close my statement today by indicating that, in my opinion, tariffs are needed by the public. They are not solely for the steamship lines, or for the Commission, or for the Government. The information placed in tariffs by the steamship lines is for the most part for their users' benefit, not just for the benefit of the Commission.

And the Commission's role in this whole process is to establish the guidelines of how this is to be accomplished, differentiate lawful and fair practices from those which are unlawful or unfair, to insure that importers and exporters receive fair and nondiscriminatory treatment, and that the users of the carriers' services are not overcharged or undercharged.

To accomplish these objectives, the Commission's tariff files have the tremendous potential to provide a single source of accurate and complete rate information. This can only be so and can readily benefit the public, however, if the information is readily accessible in a form that the public can readily use. Any data base of tariff information therefore must be available to all and serve their legitimate commercial interests.

To meet this standard, I understand that there can be no monopoly over the information, no undue impediment to its access, or no preferential treatment concerning who may obtain the data.

At the same time, the Commission also recognizes that tariff information has potentially high commercial value. And with this recognition, the Commission believes, based on our survey of the industry, that the commercial parties who use the information would be willing to pay a reasonable fee for it, be it to us or to a private vendor who actually does the bits and bytes work.

At this point, the feasibility of our aspirations in this undertaking is yet to be determined. There remains the feasibility study to be conducted during the next 10 to 15 months, and then analyzed in the forthcoming studies will be various implementation strategies and approaches to ensure that if we find a system that is workable that the implementation will in fact be fair and practical.

However, as I hope my statement makes clear, in my opinion, it is premature at this time to state with reliability which direction we will be going or what particular solution will prove more beneficial. We anticipate that the input of the advisory committee in all of these various steps will be very useful in our decisionmaking process. Because in most cases, it has been our observation that the industry is already light years ahead of us in knowing just what automation can do to render U.S. industry competitive.

I would like to close by reiterating that at this point the Commission does not see itself in the role of a purveyor of commercial data, and it is not in our current plans to go into the data management business for a specialized clientele.

However, all indications are that the technology and the demand exist for implementing tariff automation now. And with this committee's guidance, we would like very much to continue to proceed at least through the evaluation of the feasibility phase. And then as I volunteered earlier, we would be pleased to return to advise the committee on what we have found and where we would like to go from there.

With that, I would like to thank you for the opportunity to let you know how we see this problem and what we would like to do about it. And we would be very pleased to answer any question.

[The prepared statement of Mr. Carey follows:]

WRITTEN STATEMENT OF JAMES J. CAREY
VICE CHAIRMAN, FEDERAL MARITIME COMMISSION
BEFORE THE SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS CONCERNING AN AUTOMATED TARIFF FILING INFORMATION SYSTEM

June 26, 1985

Chairman English and Members of the Subcommittee:

The Federal Maritime Commission sincerely appreciates the opportunity to testify before you this afternoon on a matter of major importance to both the smooth functioning of government and the economic efficiency of the maritime community; namely, some manner of automating tariff filing to bring our industry in consonance with the rest of the international business world. The issue of tariff automation is one which the maritime industry and the Commission has been cognizant of for quite some time, but for a variety of reasons the subject of automation has not been pursued in the past. I think we have now reached the point where not to do so would place our management responsibility and judgment in question.

The Commission currently manages one of the largest public data bases in the world containing the tariff publications of all ocean common carriers in the foreign and domestic offshore commerce of the United States. These tariffs are basically price lists, company catalogs so to speak, and are mandated by Section 8(a) of the Shipping Act of 1984 which requires that the tariffs be filed at the Commission.

Tariffs are not simple price sheets. Rather, they are complex documents which contain the rates, charges, and all the shipping line's rules for packing, size, weight, etc. for carrying goods via ocean transportation. The tariffs contain the rates for each commodity that a carrier transports between stated geographical points, and in some cases, 3 or 4 pages of rules which govern the application of freight rates on a given shipment. By law, the carriers are prohibited from charging rates different from those on file at the Commission and thus the tariff stands as a benchmark upon which to measure illegal rebating and to carry out the enforcement mandates assigned to the Commission by the Congress.

Tariffs form the informational "hub" of the ocean transportation industry. They are used by importers and exporters to evaluate freight charges for a shipment of goods; by carriers to transmit prices and rules and regulations to all their sales offices as well as to shippers, (and to monitor the prices being charged by their competitors); by freight forwarders and non-vessel operating common carriers to determine available freight rates; and by the Commission to carry out our Congressional mandate through the analysis of rate patterns, assessment of the competitive conditions within trades, and to generally carry out our various surveillance and enforcement responsibilities.

There are several reasons that we feel drive the need to finally automate tariff filing. More recently, Section 18(a) of the new Shipping Act of 1984 mandates that the Commission, for five years, collect and analyze information on increases or decreases in the level of tariffs. This is literally impossible to do without the availability of automated information simply because of the immensity of the data base involved. Secondly, the tariff information itself has a great deal of economic and competitive value to shippers, carriers, and other importers and exporters in the industry. The ability to file, retrieve and evaluate tariff information has the potential of producing significant efficiencies in the private sector and quite frankly in American's ability to compete in the world market. And third, the sheer volume of paperwork at the Commission is making it increasingly difficult if not humanly impossible to carry out our Congressional mandate to examine and file tariffs as they are received, as well as to analyze the data contained therein.

Like most price lists, tariff rates are constantly changing as new services are added, as new commodities enter our commerce, or as the natural dynamics of competition and the free market dictate changes. Today, we have roughly 4500 tariffs on file at the Commission, some literally the size of the Manhattan, NY telephone directory. Each time a change is made, a new page has to be filed. This year, approximately 600,000 pages will be filed with the Commission, reflecting over 3 million separate rate changes.1/ As the tempo of the international business arena

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1/ Exhibit A details these data for fiscal year 1984.

has increased, there has been a steady increase in the number of tariffs on file at the Commission and the volume of annual filings over the past 20 years. In 1965 there were only about 2300 tariffs on file, while 8400 tariff pages containing rate changes were filed during that year.2/ The increasing deluge of paperwork filed at the Commission with the 20 year change from 8500 pages to over 600,000 pages has become overwhelming. Not only that, but the Commission's maintenance of tariffs is currently accomplished in the outmoded fashion of manually inserting new pages and re-printed pages into 3-ring binder notebooks which are kept open to public inspection. I can only compare this operation to the telephone company re-printing the page of a directory every time a telephone number is changed or a subscriber is added.

The value of tariffs to the American public, both shipper, consumer, importer and exporter, is perhaps best reflected by the value of cargo moving under these ocean tariffs and the actual physical number of shipments. In 1983 the total value of cargo carried in the United States oceanborne foreign trade, both imports and exports, was $267 billion. Well over half of this ($139 billion) was transported in the "liner trades" and is

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2/ Exhibits B and C illustrate the growth in the number of tariffs on file and the number of tariff filings, respectively.

governed by the tariffs filed with the Commission. We roughly estimate that some 12,000 bills of lading are prepared each work day representing transactions or shipments under these tariffs. In the U.S./Japan trade alone we estimate that there are over ½ million transactions annually, and between 150,000 and 200,000 in the U.S./U.K. Trade. The average commodity value of just one of these shipments is estimated at approximately $50,000.00. This results in an annual freight revenue from commodities moving under the tariffs of $12-14 billion for the maritime industry, of which approximately $3-3.5 billion accrues to our own U.S. flag carriers.

Because of these huge dollar values and its obvious economic and marketplace importance, this rate/tariff information is being constantly copied and dispatched by wire, post and courier by commercial companies to customers with particular shipping rate/route inquiries. Simultaneously with providing their tariff filings with the Commission, carriers are attempting to place their rate information into the hands of their customers and notifying their internal billing stations, etc., of billing decisions. Also attempting to acquire this same information are competitive steamship lines who have a need to keep their own rates competitive.

In 1983, we conducted a survey of industry views regarding tariff automation. That survey reflected extensive industry support from both shippers and carriers for the concept of tariff automation supported by a reasonable user fee. I would add that there were also some concerns expressed. They included concerns about cost, the ability to retrieve only selected information, and the lack of a standardized commodity classification system in order for automating equipment to efficiently handle the almost infinite number of trade route/cargo combinations. We followed this study with the publication of a Notice in the Federal Register of "Sources Sought for Paperless Federal Maritime Commission Electronic Filing, Storage and Retrieval System for Tariffs." There were 31 comments received in response to that Notice. Many of them raised significant issues both of a policy and legal nature that we felt should be addressed. After a considerable amount of staff work as to how best to proceed, in September 1984, our then Chairman Alan Green established a task force under the chairmanship of myself, Vice Chairman Carey, to develop a systematized approach and a development plan, and to proceed with an effort to determine how best to approach our entire tariff automation problem.

Operating from the perspective that the vast majority of the use and value of tariffs accrues to the industry rather than the Commission, Chairman Green adopted certain goals which he was hopeful an automated tariff system could achieve. Those goals were:

1. To determine if the automated system could be operated by the private sector.

2. To determine if the system could be financially self-sufficient through the assessment of user charges for access to the information.

3. To determine if access by the Commission could be without cost.

4. To determine if the integrity of this system could be ensured by the Commission through the development and ownership of software which would control entry into the system.

5. To determine if a means could be constructed to minimize the monopolistic control of a single company operating the system, and if efforts could be made to preserve existing satellite companies now engaged in the dissemination of tariff data.

6. To determine the feasibility of the premise that contractual arrangements for electronic filing would not curtail the ability of the public to have access to tariff documents now routinely made available in public document rooms or otherwise.

7. To determine if a system could be devised whereby contractual arrangements for electronic filing systems would not interfere with public access under the Freedom of Information Act.

8. To determine if the burden imposed upon tariff filers to comply with the technical requirements of filing tariffs in an automated system could be minimized.

9. To determine if any system exists or could be developed whereby the Federal Maritime Commission would retain the final authority to reject filings that do not comply with agency requirements and to determine if the public availability of information pursuant to the Freedom of Information Act and other statutes was any problem.

10. To determine if an electronic filing system would be able to maintain historical records that could be retained, retrieved, and reproduced for legal evidentiary purposes and to comply with governmental records retention requirements.

11. To determine if the electronic filing system could be designed to prevent unauthorized modification or tampering with data and to preserve the integrity of tariffs within the data base, yet allow the identification of errors and authorize their correction.

12. To determine if such a system would still provide that all fees for the use of the electronic filing system, either for filing of documents or retrieval and reproduction of documents would be reasonable and not deter or impair the public use thereof.

Now, these are an extensive array of goals that contain some inherent conflicts on their face. We saw early on that their nature and complexity required that we carefully evaluate the market for tariff information and work closely with the maritime industry in determining how our mutual goals of industry and government could be achieved. Earlier this year, the Commission sent questionnaires to a cross-section of the maritime community, and we are currently in the process of establishing for us, a "first ever" industry advisory committee. In April we published a notice in the Federal Register announcing our intent to establish this advisory committee and soliciting comments about the committee and how it should be structured as well as inviting volunteers to participate in the advisory committee. We are now in the process of evaluating the responses and plan to be forming the committee itself within the next two months. It is our analysis that the next logical step for us (we don't have the technical expertise in-house to do it) is to contract for a study that will evaluate and analyze some of the various alternatives that are available to us that will answer some of these questions (and their cost), and perform the necessary market research to evaluate the probable success of these various options. We would look at accomplishing this over the next 10-15 months, and then I think we will have some answers on which to determine just how, or even possibly "if" we move forward. Once this is accomplished we will then be in a position to determine which option to pursue and I can assure the Committee we'd be more than pleased to come back and advise the Committee on what we've learned and which direction we'd like to go.

I would like to close my statement today by indicating that tariffs are needed by the public. They are not solely for the steamship lines, the Commission or the government. The information placed in tariffs by the steamship lines is for the most part for their users benefit, not just for the benefit of the government. The Commission's role in this process is to establish the guidelines of how this is to be accomplished, differentiate lawful and fair practices from those which are unlawful or unfair, to insure that importers and exporters receive fair and non-discriminatory treatment, and that users of the carriers' services are not over-charged or under-charged. To accomplish these objectives the Commission's tariff files have the tremendous potential to provide a single source of accurate and complete rate information. This can only be so and can only benefit the public, however, if the information is readily accessible in a form the public can readily use. Any data base of tariff information, therefore, must be available to all and serve their legitimate commercial interests. To meet this standard, I understand that there can be no monopoly over the information, no undue impediment to its access, or no preferential treatment concerning who may obtain the data. At the same time the Commission also recognizes that tariff information has potentially high commercial value. With this recognition, the Commission believes based on our survey of the industry that the commercial parties who use the information would be willing to pay a reasonable fee for it, be it to us or to a private vendor who does the actual bits and bytes work.

At this point, the feasibility of our aspirations in this undertaking is yet to be determined. There remains the feasibility study to be conducted during the next 10-15 months and no definitive market research has yet been completed. Analyzed in the forthcoming studies will be various implementation strategies and approaches to insure that if we find a system that's workable, the implementation will be fair and practical. However, as I hope my statement makes clear, in my opinion, it's premature at this time to state with reliability which direction we will be going or what particular solution will prove more beneficial. We anticipate that the input of the advisory committee in all these various steps will be very useful in the decision making process. In most cases, it is our observation that the industry is already light years ahead of us in knowing just what automation can do to render U.S. industry competitive in the "village" of international trade.

I would like to close by reiterating that at this point the Commission does not see itself in the role of a purveyor of commercial data, and it is not in our current plans to go into the data management business for a specialized clientele. However, all indications are that the technology and the demand exists for implementing tariff automation now, and with the Committee's guidance, we would like very much to continue to proceed at least through the evaluation of the feasibility phase and then, as I volunteered earlier, we would be pleased to return to advise the Committee what we've found and where we'd like to go from there.

EXHIBIT A

FEDERAL MARITIME COMMISSION

Fiscal Year 1984 Tariff Filings in U.S. Foreign Trades

Tariffs on File (end of FY)		4,544
New/Replacement Tariffs Received		922
Pages to New/Replacement Tariffs	73,740	
Amended Tariff Pages Received	507,235	
Total Pages Filed		580,975
Rate Changes (Est.) in New/Replacement Tariffs		131,846
Rate Changes (Est.) in Tariff Amendments		3,439,053

Exhibit B

NUMBER OF TARIFFS IN U.S. FOREIGN TRADES

FISCAL YEAR	NUMBER OF TARIFFS
1963	1,651
1964	1,967
1965	2,317
1966	2,335
1967	2,514
1968	2,114
1969	2,582
1970	2,595
1971	2,718
1972	3,005
1973	3,151
1974	3,182
1975	3,174
1976	3,317
1977	3,291
1978	2,932
1979	3,043
1980	3,507
1981	3,891
1982	3,603
1983	4,231
1984	4,544

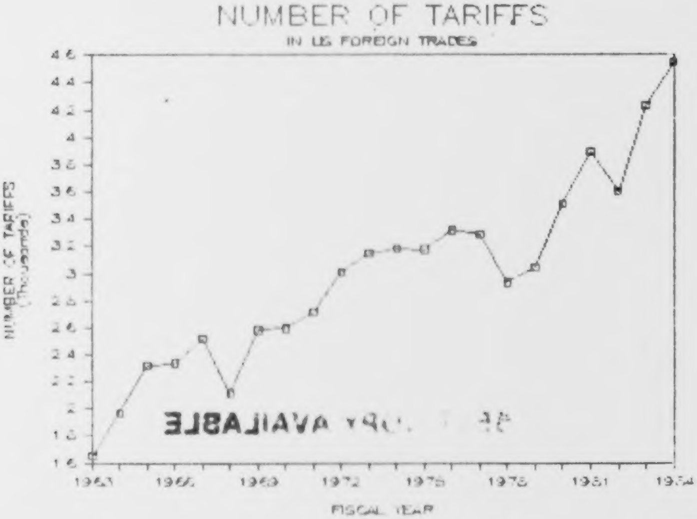
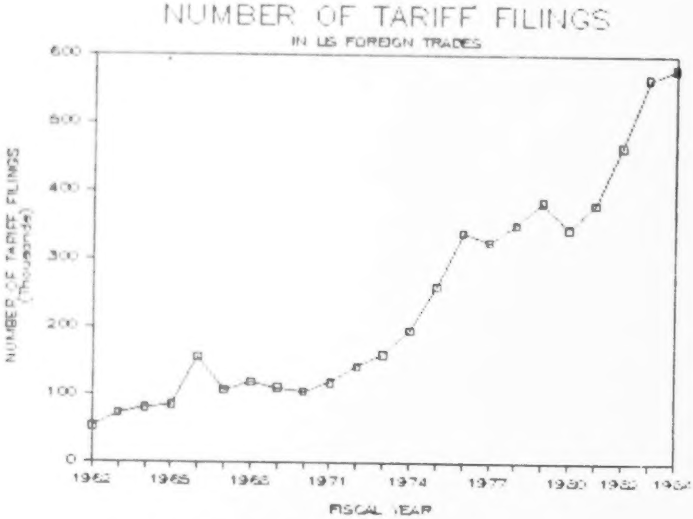


Exhibit C

NUMBER OF TARIFF FILINGS IN U.S. FOREIGN TRADES

FISCAL YEAR	NUMBER OF TARIFF FILINGS ('000)
1962	52
1963	71
1964	80
1965	84
1966	155
1967	106
1968	118
1969	110
1970	104
1971	117
1972	141
1973	159
1974	195
1975	260
1976	340
1977	325
1978	351
1979	385
1980	346
1981	382
1982	467
1983	567
1984	581



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Mr. **English**. Thank you very much, Mr. Carey. We appreciate that. You identified a number of goals of a tariff information system, and one goal is that the system "will operate in the private sector."

Could you tell me how a privately operated system can accommodate the administrative needs of FMC?

Mr. **Carey**. One of the things that I see that it would be able to do, as I indicated earlier, we now handle these things manually. And in fact, because of the large number of pages that come in, we have people checking them for format and for the technical requirements.

I would think that—well, no matter who would do it, if it were eventually automated, at least there could be software developed that could take care of the examination aspects. Again it really depends on what direction we determine to go after the feasibility study.

But if it were an outside firm operating it simply by telephone modem hookup, that we would have access to all of the data. And we could use that then simply to be able to do our own data analysis, and our own number crunching, and in fact do the oversight that we are supposed to do.

And then finally, I guess, because I have seen in the industry both on the carrier side and on the shipper and importer/exporter side that they are much more into the automation process than we are, I would think that through the advisory committee we can pick up, quite frankly, some suggestions and ideas from them on how better to be able to use this.

Mr. **English**. How will FMC retain the final authority to reject filings if the system were privately run?

Mr. **Carey**. That I do not have an answer to. And it is because we just do not have the software, hardware, or systems integration experience or expertise in the Commission. It is one of the things that we are hoping to learn from the feasibility study, what exists out there today that can perhaps do this for us, or what exists that we can buy and bring into the Commission in both hardware and software.

And then some of these various questions that I have outlined with that existing technology; is that something that can be accomplished? Or maybe the only way that we can do it is if we have the hardware per se in the FMC. I just do not know, and we are looking to the experts in that field to tell us what is doable and how it is accomplishable.

Mr. **English**. Do you think that it is fair to expect the system to be financially self-sufficient while providing free service to FMC; and that question comes down to why should others subsidize the FMC?

Mr. **Carey**. Well, I guess that I do not have the answer to that either in that one; we are not certain that we will go outside, but that is one of the options that we have stressed in the 12 points that we have put out, that it is something that we would like to see if it is doable or if it [illegible]

As to whether it is fair, I guess that one of the things that I would look at, or at least I think that some of the companies that are in this business already who would be bidding on these contracts should look at. I think that part of it will be a commercial decision that they will have to determine as to whether it is something that they even want to do or not. We may not have that option.

Mr. ENGLISH. The SEC system is going to include features and information that are only of interest to the SEC. Do you anticipate that the FMC will require the system to include information and capabilities that will be used only by the FMC?

Mr. CAREY. No, I really do not. Because that does not exist now in the tariffs that are filed. In other words, all of the data that are in those tariffs is usable by the private sector. And we also use it, but the industry also uses everything that comes in on it. So I would not see any particular single item on there that would be usable only by us, no.

Mr. ENGLISH. The SEC has paid almost $10 million toward the development of EDGAR.

Do you expect that the FMC will have to contribute toward the software development or other startup costs?

Mr. CAREY. I guess again that I do not have a good answer for you. Any contribution that we could make currently I think will come out in the feasibility study. If it were to be a contribution as far as the software development by any expertise; no, we do not have that expertise in software development.

If it is expertise in tariffs; yes, we will be giving all of that simply because I think as a huge tariff data base manager currently, we have probably some of the best expertise in the world in that type of thing.

As to any financial contribution, again I do not think that I will know that until we find out what direction we will be going, and I will not know what direction we will be going until I find out what options exist. And we really will not have that until we have gone through the feasibility study and have people who understand what software and hardware currently exists.

As you indicated in your statement, there are currently many companies that already take the hard copy that we have at the Commission, and then go keypunch that and sell that information. And again I would be looking to the feasibility study to determine this, but perhaps we do not have to reinvent the wheel. Maybe the answers are already out there. But I would see right now that if you look at both the input side where things are input to the Commission and then the output side, it seems to be highly automated on both ends. The glitch is in the middle and the paper problem is us.

And I would think that if there is some way that we can eliminate at least us being the paper link so that the thing can be automated throughout, that everyone would gain.

Mr. ENGLISH. Who is going to own the software that operates this?

Mr. CAREY. Again I would hope to learn that from the feasibility study. It would probably—well, I should not speculate until I have some answers, and I just do not know.

Mr. ENGLISH. We have a vote taking place over on the floor, so we will recess until the completion of that vote.

[Recess taken.]

Mr. **Kleczka** [presiding]. The committee will resume the questioning of the first panel.

Let me first thank not only the panel, but also the panels to follow and the audience. We had a series of three votes in a row. That's why we've been detained this long, and we expect more delays during the afternoon.

So, Mr. Carey, if I might continue. Let me ask you a few questions on a task force that was set up back in September 1984. What has been done since September 1984 with your task force?

Mr. **Carey**. Well, a whole series of actions really, and primarily internal discussions in the Commission on what are the problems that we face and some of those, quite frankly, as you heard in my earlier testimony, were questions that Congressman English had raised over a year prior.

Part of our time has been spent digesting and discussing the results of the study that we did in 1983 of, "is there a need for this," and is—you know, how does the industry perceive it and is it something they would like to see us go forward with, and would they be willing to pay a user fee? That type of thing.

We've also spent part of that time in simply designing the questionnaire that was to go out to the industry to elicit a whole series of inputs from the industry as to how they would like to see us proceed. What are some of the directions they would like to see us go. What are some of the holes in the current system? That type of thing.

A part of that time has also been spent in analyzing the results from those questionnaires. A part of the time has been spent in, one, did we want to form an advisory committee. If we did, could we afford it. Did we have enough money in the budget. We're a small agency and, although we're not talking about huge sums of money, when you start talking about bringing people in on per diem and their travel—15 to 20 to 25 people times about a $1,000 a crack you're running into—two or three times a year, that's $45,000 to $50,000. For us, that's significant in that our annual budget is around $11 million.

So, those types of things—and, then, also to a large extent, some of the questions that your committee has been raising today and in a lot of those question, as you heard by my testimony, we haven't come up with answers and part of the reason we don't have the answers is we don't have the in-house expertise, we don't really understand the software and systems integration business.

Mr. **Kleczka**. Those answers, hopefully, will be gathered by the Advisory Committee which is to report in what, about 10 to 15 months?

Mr. **Carey**. No, sir. Those—most of those answers I would look for to come out of the feasibility study with inputs from the Advisory Committee, and then it would also be our intent, once we've finished the feasibility study and gotten some of their—the different options that they say we could use on this thing, we would also like to run those by the Advisory Committee.

The advisory committee is going to be made up of people who are out there operating in the business arena, and the one thing I'm very concerned about is that we would end up designing a great new wheel, but the wheel doesn't fit on anybody's car.

So, we want to make sure, and that was one of our primary concerns, is to have the industry there and then the advisory committee to make sure that what we are—the directions that we're starting to go plugs into their system, both from the input and then also from the output end because, as I indicated earlier, I see us as kind of the paper—we're the paper roadblock in the middle of automation on both ends of the system.

Mr. KLECZKA. OK, basically what were—very briefly, what were the results of the questionnaire?

Mr. CAREY. Let me ask Mr. Murphy to give you some of those because he's the one that really did the number crunching on that.

Mr. MURPHY. The questionnaires were sent out at the end of January and we cut it off as of April 30 as far as responses——

Mr. KLECZKA. They were sent to whom, all the shippers?

Mr. MURPHY. They were sent to major segments of the industry—17 questionnaires were sent to carriers; 19 were sent to conferences; 10 were sent to nonvessel operating common carriers; 52 were sent to ocean freight forwarders, and 20 were sent to shippers.

Out of the 118 we got responses from 63.

The questionnaire showed a general interest in automated tariff systems. Most respondents were pretty much satisfied in the form in which they have the data today to use, but out of those who are not satisfied, almost everyone indicated the desire for automated tariff information.

They indicated that current sources provided most of their needs, and those that did suggest improvements in the availability of information today favored increased automation that would provide more timely and accurate data.

The smaller the firm the less interest there was in terms of automation; the larger the firm the more interest naturally there was in automated tariffs. The sample was chosen from a combination—about one-half came in when we issued a press notice of the formation of the task force and said we're interested—we want to know what you're doing.

The other half was selected through a random sample of a computer listing of the various entities regulated by the Commission—and it was geographically dispersed.

About 25 percent of all of these respondents indicated that they do use tariff information in an automated fashion today, which we felt was a rather high indicator.

Mr. KLECZKA. Twenty-five percent use automated or computerized data now?

Mr. MURPHY. Yes, sir.

Mr. KLECZKA. From the private concerns selling that data?

Mr. MURPHY. Primarily. Some—the question was a very general question—some of them use it for their own in-house tariffs and are able to access it.

Questionnaires were designed to primarily get a general overall indication of the industry perception. We feel that the contractor who does a feasibility study will have to go into a great deal more depth.

We, not having systems expertise—we're a rather small agency and we just don't have any data processing type of expertise—but we feel that such expertise is needed to really explore in depth to follow up on a lot of this, and that's what our contractor would be doing.

Mr. Kleczka. OK.

Mr. Murphy. With respect to those that produce information in an automated environment, 25 percent of the carriers that responded indicated that they do produce their tariffs in an automated fashion today. That ranges from word processing to—one carrier does have a very highly sophisticated data base system.

Most of them are pretty much word processing oriented, and 50 percent of the conferences responding indicated that there was some automated compilation of their tariffs as well.

Mr. Kleczka. Mr. Carey, have any FMC funds been spent up to this point on development toward automation? How far——

Mr. Carey. Not really, other than I guess the in-house money we've spent for the questionnaires and the postage and that kind of thing. We do have some money in this year's budget for the feasibility study, and I think that's between $100,000 and $150,000.

But, none of that has been spent and part of the reason for that is that we haven't yet determined which direction we want to go. We feel that before we finish a statement of work either to be bid on or to provide to whoever is going to do this we need some type of expertise and we've looked at the possibility of bringing in a consultant just on a short-term, part-time basis to take a look at what we've developed as a statement of work.

Well, it turns out that under the—and I'm not totally conversant with this, but I'll give you my best shot.

Under the small procurement practices—we are unable to move forward the way we want to and we've checked with—John, who is it, GSA?

Mr. Binetti. Yes, sir.

Mr. Carey. We've checked with GSA as to how we could move forward on it. They indicated that what we want to do is correct, but their regulation—when they wrote the regulations—the regulations don't exactly say what their intent was and they're in the midst of changing it, but in the interim, in order to be able to do this thing exactly by the numbers, we have to go through a small procurement process, I guess, of under $25,000. We're estimating this consultant would cost about $10,000.

And, part of that involves a notification of the Congress to seek a waiver, and, John, maybe you can enlarge on that.

Mr. Binetti.

Mr. Binetti. We had a question regarding recent amendments to the Federal Acquisition Regulation, as to whether we're going to hire any consultants to help us draft the work statement under the small purchase procedures.

We requested the General Counsel's Office at GSA to provide us with a ruling on that and they said that we do have legal authority to do that—the regulations were somewhat confusing in that regard—and to be sure that we had the authority under the regulations we should grant ourselves a deviation, is what they called it, under the FAR part 6.

We have done that and we are in the process of sending advance notice to Congress as required by that public interest exception basically, that we do intend to go forward with a small purchase procedure——

Mr. CAREY. Basically, we're trying to move forward with a feasibility study. To do that we need the consultant. To get the consultant we have to go through this process. So, it's—we're trying very hard to——

Mr. KLECZKA. OK, Mr. Carey, your statement lists three reasons for an automated tariff system. Two are internal to FMC: the need to conduct research and the volume of the paperwork you have to handle. The third reason is to increase efficiency in the private sector.

Well, the private sector witnesses are going to testify in a few minutes that they are already providing services to the shipping community. Why is the FMC getting involved in meeting private sector needs? Is there a statutory requirement for the FMC to publish tariffs?

Mr. CAREY. Well, one of the reasons that we're getting into it—and I brought along a copy just of the preamble to the new 1984 Shipping Act. And, what that says, in part, is that one of the purposes of that act is to provide an efficient and economic transportation system in the ocean commerce.

And, then another portion of it says to encourage the development of an economically sound and efficient U.S.-flag liner fleet. And, I guess I would concentrate on the efficient side of it.

As I said earlier, I look at us now as we're the paper roadblock in the middle of this whole chain and so, although it's not really I guess our primary purpose to help the private sector when we move forward with this, but by moving forward I see that, one, we meet some of the objectives of the Congress in the 1984 Shipping Act and, second, by making us more efficient we really make the industry and the big U.S. trade side, the U.S. importers and exporters, more efficient, and if you really look at the down-the-line fallout that that makes us more competitive internationally and that allows for more U.S. imports to be exported, more U.S. jobs, et cetera.

So, that kind of fallout comes out of this.

Mr. KLECZKA. Do you think that your automated system, should it ever come on-line, will affect private companies now offering this service commercially?

Mr. CAREY. Well, yes it could, and that will really depend on what direction we finally go. It depends on whether we end up having something internal or whether we in fact decide that one of the current existing external systems answers the problems and we would go with something like that.

Now, in either one of those cases I would think that because there are a number of private companies that now take this—the data that's in the tariffs and sell it out in the private sector, rate services and tariff watch services, that to a degree, no matter which way we go, this could be a major help to some of them because right now they get that chunk of paper that comes to us and then they go keystroke it into a machine, and that's very labor intensive.

If this program is eventually set up so that tariffs can be filed electronically and that data can come in electronically, I would think that either—if it's a private sector form or if it's the Commission, at the end of a work day we could make computer tapes available to whoever wants them for a reasonable fee, and then these companies, instead of having to keystroke all of this in, can simply run the tape and be ready to roll by midnight that night with their system updated for literally a small percentage of the current cost.

So, that's a fall out that I do see from it.

Mr. KLECZKA. You have stated that a lot of paperwork comes into the agency, and that it's not just simple price sheets but rate charges, shipping line's rules for packing, size, weight, et cetera.

How much of that information is necessary for your function? Is it not true that you're interested only in the rates and not the packing, size, and weight?

Mr. CAREY. That's right, much of it is not needable. We don't need a lot of the detail. What we've done, we've set a very minimum standard—the minimum things that we need—and as I think one of the people will testify further today—in looking at one of their statements—the shipping lines use the tariff pages to a large degree as a marketing tool, and so a lot of the data that is in there is put in by them. We have a very minimum set of standards on format and what goes on the front page and how they will describe it.

Mr. KLECZKA. Evidently you get more than you require.

Mr. CAREY. We do, and that's fine when there are no problems with rate disputes or with the rates being charged that were not accurate under the law.

But, when we do then have to go into the data and the arguments are usually not so much around the rate charge as they are, to some extent, that one rate was charged by the shipping—the carrier saying that that was the description that was accurate.

The other rate that the abused party feels should have been charged is a rate that he based on reading the rules and regulations. That's where most of the disputes come in, and, in those cases, then we do need that rules data.

In many of them—this comes down to a description of a commodity.

Mr. KLECZKA. How many disputes do you get, say, within a month?

Mr. CAREY. Mr. Smith, can you answer that.

Mr. SMITH. During fiscal year 1984, the Commission received 973 informal complaints of which about two-thirds involved tariff disputes. The Commission's staff attempts to resolve these matters informally through research of the tariff files. The Commission also considered 58 informal dockets and 137 special dockets which also involve tariff disputes and require proof of the actual transportation rates as reflected in the Commission's tariff files.

Mr. KLECZKA. I'm wondering if it wouldn't be prudent on your part to just take a simple filing, a very brief filing, and then should a dispute occur, to ask the carrier or whomever for more documentation.

Mr. CAREY. That has not been discussed as yet and I guess I can't. John, can you answer it?

Mr. BINETTI. The statute requires that all of the rates, charges, and practices that are offered by the carrier be disclosed in public tariffs.

Mr. KLECZKA. And, practices would include things like the packing size and all that?

Mr. BINETTI. Yes.

Mr. KLECZKA. OK. Fine, let me thank you gentlemen for appearing before the committee today. We'll now call on the next panel.

Mr. Don Becker, publisher of the Journal of Commerce, New York. He'll be accompanied by James Devine, marketing manager, Rapid Access Tariff Expediting Service. And, also Mr. Dean Putnam, vice president, Carrier Systems Marketing, Transax Data Corp., Falls Church, VA, accompanied by Mr. Henry Gilbertson.

Gentlemen, would you please come forward.

Mr. Becker, if you would, lead off with your statement.

STATEMENT OF DON C. BECKER, PUBLISHER, THE JOURNAL OF COMMERCE, NEW YORK, NY, ACCOMPANIED BY JAMES DEVINE, MARKETING MANAGER, RAPID ACCESS TARIFF EXPEDITING SERVICE [RATES]

Mr. BECKER. Good afternoon, Mr. Chairman, Representative Kleczka. I'm Don C. Becker, president of Journal of Commerce, Inc., and publisher of the Journal of Commerce. I'm accompanied by James Devine, who is the manager of our RATES program; RATES stands for Rapid Access Tariff Expediting Service.

We are pleased to be here today and provide testimony concerning electronic collection and dissemination of tariff data by the Federal Maritime Commission.

In the interest of time, I would like to make a brief statement, which is really briefer than the written remarks that have been distributed. You have the full text for the record.

The Journal of Commerce has since 1827 been collecting and distributing data about ocean shipments to and from the United States. Over the past 158 years, the Journal has used the most modern technology available to quickly and comprehensively report on the shipping industry in the import and export of goods.

One good example, the Journal was the first to commercially use Morse code to report on shipments of goods entering the United States. That was made possible by——

Mr. KLECZKA. When was that, last year? [Laughter.]

Mr. BECKER. Well, it was at the time that Mr. Morse owned the newspaper, so—but, that was about 1860 and maybe earlier.

Thus, we've long understood that service to our customers requires not only the latest technologies but also the development and application of new technologies. Electronic collection and distribution of tariff information filed with the Federal Maritime Commission is the most recent technological undertaking by the Journal of Commerce and I'll describe that system a bit—in a few minutes.

But first let me say the Journal supports the Federal Maritime Commission's initiative to utilize electronic means to collect and disseminate tariff data filed with the Commission, which is proposed in its automatic—automated tariff filing and information initiative known as ATFI.

We think it is important that the information marketplace has produced and will continue to produce a wide variety of tariff information services that meet the demonstrated private and public sector needs.

In this connection, let me make three points.

The Journal's RATES service already provides online access to the full text of FMC ocean tariffs. Now, you've heard the description of the size of that data base, so we're talking about 600,000 pages of tariff information.

Second, the Journal and other services are capable of providing electronic filing of tariffs, and that's another stated objective of the FMC's ATFI plan.

Third, RATES and other organizations already provide extensive capacity to manipulate tariff data. A third goal of the ATFI plan.

Importantly, these services were not designed by the FMC, rather they were developed in order to satisfy the marketplace's demand for electronic tariff services. Thus, while the Journal supports the ATFI initiative and believes that its goals can be obtained, it should be carried out, however, in conjunction with already proven and developed services.

The Journal's concern is that the Government should not reinvent the wheel and thereby create disincentives for the private sector development of information systems. In the end, the competitive marketplace will result in lesser costs and more useful products to both the Government and the shipping community.

I would now like to describe briefly the Journal's Rapid Access Tariff Expediting Service [RATES] which was launched in January 1984.

After 3 years of planning, research, and development, at a cost of millions of dollars, RATES provides a variety of carriers, shippers, freight forwarders, importers, and port authorities with up-to-date electronic access to the full text of ocean tariffs filed with the FMC.

RATES subscribers may access the RATES data base to any communicating terminal or word processor. RATES and several other tariff service companies also permit carriers to file tariffs and make tariff changes electronically.

Tariffs are electronically transmitted to the Commission through the utilization of data receivers located within the FMC's headquarters building.

With these services anyone can file—can readily file tariffs with the Commission and at the same time enter complete tariff pages into the data base. In most cases no special equipment is required. A terminal and a modem are all that is necessary.

While this procedure is not electronic filing in its purest stage, it does demonstrate the capacity of the private sector service companies to provide electronic filings.

Therefore, to make the point anew, the basic ingredients of an electronic data filing and dissemination system are already in place. These are not FMC provided services, but they effectively have put the FMC at the forefront of the development of electronic filing systems.

As this subcommittee is well aware from its April hearings on the SEC's EDGAR System, electronic filing and access issues are not unique to the Federal Maritime Commission. Although many of the issues posed by agencies' consideration of electronic systems are similar, each agency or proposed system must also be examined individually.

Fortunately, the FMC has approached the development of an electronic tariff system in a very different way than the SEC approached EDGAR. We applaud the FMC for taking several steps designed to elicit needed information about the shipping community's interest in, one, the automated system; two, the market for tariff information products; and, three, the availability of private sector information services.

For example, the FMC issued a request for information in which it asked for potential contractors to inform the FMC of current and potential products that vendors might be able to provide to meet the FMC goal of automation.

Subsequent to the request for information, the FMC surveyed the shipping community in an effort to determine its needs and preferences in the design of an automated system. Unfortunately, the FMC did not seek to survey existing information vendors concerning their services to their clientele.

In addition, the FMC's recent notice of intent to form an advisory committee reflects an understanding of the need to involve the public in the design of an automated system. The Journal hopes that the FMC will include in its advisory committee persons who are knowledgeable about the current technologies and the services now provided by private vendors.

While the Journal does not endorse every aspect of every step that the FMC is taking, we do strongly endorse the FMC's open and full consideration of the issues, many of which are complex and difficult.

As the subcommittee evaluates electronic data systems generally and the FMC's ATFI plan in particular, there are several fundamental considerations that we believe should be kept in mind.

The FMC may have legitimate needs to utilize an automated tariff system, but it is essential to separate two distinct services that the agency may seek to acquire. The Government may seek, for the benefit of the shipping community and the public, to develop a tariff filing and dissemination system.

The principal benefits of such a system would be to eliminate the need to file tariff material in paper form, or to view paper documents in order to see what tariff material has been filed.

A secondary benefit would be to minimize the needs for the FMC to maintain file rooms full of paper documents. The FMC is also seeking for its own convenience to organize, manipulate, and examine electronically file tariff material. The FMC's needs in this area may be numerous and costly.

The Journal submits that unlike EDGAR, the basic elements to satisfy these two goals are available in the private sector and the Government does not need to stimulate the creation of such services. The administrative needs of the FMC could well be served through traditional facility management contracts.

Both the SEC and the FMC would like their contractors to make a profit from the collection and dissemination of services, but it's very difficult for us to understand how the economics will permit the Government to get a virtually limitless number of value-added services for free.

The only way is the rather difficult notion of barter where in return for the provision of services to the Government at no cost, the contractor gets a monopoly on the sale of the data.

The issues, therefore, are on the technical level fairly straightforward, particularly when one surveys existing private sector services. In other respects, the issues are extremely difficult, particularly insofar as the Government seeks to marry external filing and dissemination functions with internal administrative services.

Nonetheless, I believe that with the help of this subcommittee and other interested persons, the FMC will develop an appropriate system utilizing the input of the private sector.

Mr. Chairman, we thank you for the opportunity——

Mr. KLECZKA. Fine, thank you for your statement, Mr. Becker.

[The prepared statement of Mr. Becker follows:]

Testimony of
Don C. Becker,
Publisher

JOURNAL OF COMMERCE, INC.

ELECTRONIC COLLECTION, AND DISSEMINATION OF TARIFF DATA BY THE FEDERAL MARITIME COMMISSION

Good afternoon, Mr. Chairman and members of the Subcommittee. I am Don C. Becker, President of Journal of Commerce, Inc. and Publisher of The Journal of Commerce. I am accompanied by Jim Devine, Manager of our RATES program. I am pleased to be here today and provide testimony concerning electronic collection and dissemination of tariff data by the Federal Maritime Commission.

The Journal of Commerce has since 1827 been collecting and disseminating data concerning ocean shipments into and out of the United States. Over the past 158 years The Journal has employed the most modern technologies to quickly and comprehensively report on the shipping industry and the importation and exportation of goods. For example, The Journal employed the first commercial application of Morse Code to better report on shipments of goods entering U.S. ports. We have understood that service to the public and our customers requires not only the utilization of available technologies, but the development and application of new technologies. Electronic collection and dissemination of tariff information filed with the Federal Maritime Commission is only the most recent technological innovation that The Journal has supported.

The Journal supports the Federal Maritime Commission's initiative to utilize electronic means to collect and disseminate tariff data filed with the Commission, which is proposed in its Automated Tariff Filing and Information Initiative ("ATFI").

The information marketplace has produced and will continue to produce a wide variety of tariff information services, that meet demonstrated private and public sector needs. The Journal's RATES service already provides on-line access to the full text of FMC ocean tariffs -- one of the stated goals of the ATFI plan. The Journal and other services are capable of providing electronic filing of tariffs -- another stated objective of the FMC's ATFI plan. RATES and other organizations already provide extensive capacity to manipulate tariff data -- a third goal of the ATFI plan. These services were not designed by the FMC, rather they were developed in order to satisfy the marketplace's demand for electronic tariff services.

The Journal supports the ATFI initiative and believes that its goals can be obtained. This should be done, however, in conjunction with already proven and developed services. The Journal's concern is that the government should not reinvent the wheel and thereby create disincentives for the private sector development of information systems. In the end, a competitive marketplace will result in lesser costs and more useful products to both the government and the shipping community.

A. A description of RATES and existing electronic filing services.

The Journal's Rapid Access Tariff Expediting Service - RATES®, was launched in January, 1984, after three years of planning, research and development, at a cost of millions of dollars. RATES is an on-line ocean freight tariff storage and retrieval service.

There is only one source for the RATES data base of ocean freight tariffs -- the tariffs filed with the FMC. The RATES staff inspects new tariffs and changes to existing tariffs and the material is captured and converted to electronic files. The raw tariff data is enhanced by the RATES staff to speed search and retrieval, and to permit easy identification of rates, rules and surcharges. The RATES system is able to accept other input sources, e.g., data tapes and disks, to permit maximum utilization of tariff data that is filed electronically. Currently, the RATES system contains the full text of ocean freight tariffs on file with the FMC. This has been done through the manual keystroking of every word of every single current tariff. New tariffs and amendments are entered daily and typically are on line and available to our customers by 9:00 a.m. the day following filing with the FMC.

RATES provides a variety of carriers, shippers, freight forwarders, importers, and port authorities with up to date electronic access to the full text of ocean tariffs filed with the FMC; RATES users may identify such tariffs by trade route, port-pairs, intermodal points or FMC number; and by a keyword system users can identify rates for commodity descriptions or intermodal service points. RATES subscribers may access the RATES data base through any terminal, word processor or microcomputer capable of asynchronous telecommunications -- e.g., a personal computer equipped with a modem. RATES subscribers may simply view the full text of tariffs, print the full text, or view or print summaries or portions of the tariffs. This on-line interactive service permits a varied user-friendly search and retrieval functions. We are aware of of no other service that provides complete and on-line interactive services for the all FMC ocean tariffs. RATES has over 200 subscribers, representing all segments of the shipping community. For the Subcommittee's information, I am submitting for the record a listing of RATES subscribers.

RATES and several other service companies permit carriers to file tariffs and tariff changes electronically. Under the existing rules of the FMC, as amended by Docket 84-35, tariffs may be electronically transmitted to the Commission, through the utilization of data receivers located within the FMC's headquarters building. Tariffs may be electronically transmitted, although a paper copy must still be filed with the Commission. Many tariffs are now filed in this fashion through a number of existing tariff services. With these services any carrier, conference or other submitter can readily file tariffs with the Commission, and at the same time enter complete tariff pages into the data base. In most cases, no special equipment is required of submitters - a terminal and a modem is all that is necessary. While this procedure is not electronic filing in its purest stage, it does demonstrate the capacity of private sector service companies to provide electronic filings.

Therefore, the basic ingredients of an electronic data filing and dissemination system are in place. These are not FMC provided services, but they effectively have put the FMC at the forefront of the development of electronic filing systems.

B. Electronic filing: the issues.

As this Subcommittee is well-aware from its April hearings on the SEC's EDGAR system, electronic filing and access issues are not unique to the Federal Maritime Commission. Although many of the issues posed by agencies' consideration of electronic systems are generic, each agency or proposed system must also be examined individually. Each agency's mission is unique, as are its needs for data, the public's interest in the data and the private sector's activities in providing data services. Therefore, while many of the questions raised by this Subcommittee concerning EDGAR have application to the FMC's proposed electronic system, some do not. Moreover, even those generic questions that are also applicable to the FMC may yield substantially different answers.

The Chairman expressed this point succinctly at the Subcommittee's April hearings:

> [E]ach agency and each information system must be judged on its own needs, operations, and history. A system that works well for one agency or for one industry might be inappropriate for another. One agency may be able to justify its own system and another agency might do better by purchasing an existing or enhanced data system from the private sector.

The FMC is not the SEC. The regulatory purposes of the two agencies are fundamentally different. The public's interest in the FMC's tariff data pales in comparison to the massive interest in material filed with the SEC. Yet, while the SEC is attempting to foster the development of electronic systems, several companies already have invested millions to develop electronic systems to collect and disseminate FMC tariff data. Therefore, while the general public interest in the SEC's data may be greater, the shipping community's economic interest in tariff material has already produced a focused demand for information services relating to tariff filings at the FMC. These differences are important to keep in mind, for they affect any evaluation of the FMC's plans and they provide some basis to contrast the development of the EDGAR system by the SEC.

The FMC has also approached the development of an electronic tariff system in a very different way than the SEC approached EDGAR. The Journal believes that the FMC has taken several steps designed to elicit needed information about the shipping community's interest in an automated system, the market for tariff information products, and the availability of private sector information services. For example, on November 14, 1983, the FMC issued a request for information (FMC-RFP-84-02), in which it asked potential contractors to inform the FMC of current and potential products that vendors might be able to provide to meet the FMC's goal of automation. The Journal provided the FMC with an extensive submission, in which it explored not only the capability of its RATES service, but also suggested a series of legal and policy issues that the FMC would have to address in designing any automated system. For the Subcommittee's information, I am submitting a copy of The Journal's submission for inclusion in the record. Subsequent to the request for information, the FMC surveyed the shipping community in an effort to determine its needs and preferences in the design of an automated system. Unfortunately, the FMC did not seek to survey existing information vendors concerning their services or their clientele. While The Journal would have structured the survey differently, this too was an important step for the FMC to take. In addition, the FMC's recent Notice of Intent to Form an Advisory Committee reflects an understanding of the need to involve the public in the design of any automated system. The Journal hopes that the FMC will include in its advisory committee persons who are knowledgeable about the current technologies and the services now provided by private vendors. While The Journal does not endorse every aspect of every step that the FMC has taken, we do strongly endorse the FMC's open and full consideration of the issues, many of which are complex and difficult.

As the Subcommittee evaluates electronic data systems generally, and the FMC's ATFI plan in particular, there are several fundamental considerations that should be kept in mind.

The FMC may have legitimate needs to utilize an automated tariff system, but it is essential to separate two distinct services that the agency may seek to acquire. The government may seek, for the benefit of the shipping community and the public, to develop a tariff filing and dissemination system. The principal benefits of such a system would be to eliminate the need to file tariff material in paper form, or to view paper documents in order to see what tariff material has been filed.

A secondary benefit would be to minimize the need for the FMC to maintain or examine file rooms full of paper documents. The salient fact is that such a filing and dissemination system principally meets needs external to the Commission. The government may also seek, strictly for its own convenience, to organize, manipulate and examine electronically filed tariff material. The government's needs may be numerous and costly.

The Journal submits that unlike EDGAR the basic elements of these two goals are available in the private sector and the government does not need to stimulate the creation of such services. The administrative needs of the FMC may be served by the use of these services through more traditional facility management contracts.

It is not news that everyone would like something for nothing. Both the SEC and the FMC would like their contractors to make a profit from the public services (collection and dissemination) adequate to cover the expense of providing the government with the internal services it wants. This is the true problem with EDGAR. Absent extraordinarily high user fees (which are likely to impede access to government information), it is difficult to understand how the economics will permit the government to get a virtually limitless number of value-added services for free. The only way is the rather difficult notion of barter -- where in return for the provision of services to the government at no cost, the contractor gets something of great value, e.g., a monopoly on the sale of data. No system would more clearly and directly skew the marketplace's judgments about which services meet market needs.

The separation of the internal and external systems, does not solve all the problems. A substantial unsolved problem is how to control the resale of raw data that the contractor will disseminate to the public. The agency will understandably seek to monitor if not fix the prices that the contractor may charge for public access to the data it electronically maintains in order to assure that price is not an impediment to public access. Let us suppose that the government has set $1.00 as the price for a given electronics record, or $100 for all records produced on a given day. A wholesaler could purchase all the records for $100, retain them, and then essentially resell them to ten other firms at a price of $50 each. The wholesaler will have made $400, and the wholesaler's customers will have each saved $50 by not buying directly from the government contractor. In addition, the wholesaler will still have the material for resale purposes. The government contractor, who spent all the time and money designing and operating the system, will find it difficult to compete. The only way to ensure the ability of the government contractor to compete in the sale of raw data is to restrict the ability of it competitor to resell the raw data in bulk form.

The issues, therefore, are on one level fairly straightforward, particularly when one surveys existing private sector services. In other respects, the issues are extremely difficult, particularly insofar as the government seeks to marry external filing and dissemination functions with internal administrative services. I believe that with the help of this Subcommittee and other interested persons, the FMC will develop an appropriate system utilizing the input of the private sector.

Mr. KLECZKA. Mr. Putnam.

STATEMENT OF DEAN R. PUTNAM, VICE PRESIDENT, CARRIER SYSTEMS MARKETING, TRANSAX DATA CORP., FALLS CHURCH, VA, ACCOMPANIED BY HENRY GILBERTSON, MEMBER, BOARD OF DIRECTORS

Mr. PUTNAM. Mr. Chairman and members of the subcommittee, I'm Dean Putnam, vice president of marketing for Transax Data Corp. Transax is the largest publisher of maritime tariffs in the United States.

I have with me today Mr. Henry Gilbertson, a member of our board of directors, and formerly president of Sea Land Industries, one of the largest U.S. flag carriers in the maritime industry.

We're here today to support the FMC's tariff automation plan. We believe that the FMC plays a vital role in the international maritime market and that the efficiency and productivity of the agency suffers on the whole due to a paper logjam within the agency.

While the issue today is FMC automation, I would like to point out that the private sector has been committed for many years to development of automated systems for the filing and dissemination of tariff information which is required by the Federal Maritime Commission.

To date millions of dollars has been spent by numerous firms in the private sector on the development and filing and tariff information retrieval systems. While I understand the FMC's requirements to automate internally, we do not agree with their plans to provide a dissemination service to the public.

These services are already in place and have been for many years.

In that light, I would like to relate to you the status of automation within the industry and the market forces that are currently working within the industry.

Transax Data was formed in 1980, and it pioneered the electronic filing of tariffs for the Federal Maritime Commission and thereafter the Interstate Commerce Commission. In 1980 there were two microprocessors on the market and much of the development involved communications and the ability for microprocessors to compile, edit, and file electronic tariffs with the Government.

At that time, the only systems available outside of main frame systems in use by only the largest carriers were manual systems provided by in-house tariff publishers or service bureaus like International Tariff Services.

These services were provided mainly on paper and provided paper distribution of millions of copies a month around the world. Today most major U.S. flag carriers, many of the independent, and most conferences have automated tariff compiling systems in place and have the ability to file electronically with the Federal Maritime Commission.

Transax has users in New York, San Francisco, Florida, Los Angeles, Seattle, Hong Kong, Manila, London, and Brussels and there are a number of other carriers in major port areas around the world currently reviewing our system.

However, even though a majority of the filings being made with the Federal Maritime Commission each day are electronically transmitted, the FMC does not benefit from this electronic information.

In order to satisfy current requirements, they must print these pages out and hand in two copies, thus contributing to the paper jam at the Federal Maritime Commission.

The development and marketing of automated systems within the maritime industry has not taken place overnight. Traditionally, the service has been provided on paper with manual printing and distribution. It was a new concept that was pioneered by CSS 4 years ago and the growth in four years has resulted in over 50 percent of all filings before the Commission being electronically transmitted.

The FMC only provides minimum standards as to the form of a tariff. The carriers themselves must describe, in addition to the rates and charges they assess for the services, all of the services provided to the shipper that affect the rates. So, the tariff is a marketing document as well as a regulatory document.

As a marketing document the tariff is distributed through mail and courier services today to many shippers, receivers, and carriers around the world. ITS alone sends out over 100,000 tariff amendments a day to different receivers within the industry.

One of the key elements in electronic filing is the sensitivity of line disruption during the filing process.

In the 4 years that Transax has been providing electronic filing services we have had no known error in transmission. That is unheard of in the electronic industry. We had to develop special software that guarantees that the rates as developed by the carriers were accurately transmitted to the Government.

The tariff is also a legal document so any errors in rates or omission by the carrier also must be adhered to whether or not they were in error. So, it is important that only the most advanced technology on communicatons be permitted, otherwise errors in tariffs may occur.

During this period, Transax has invested millions in the development and marketing of electronic filing services. We've an ultimate goal of providing electronic dissemination to the end user, shipper, carriers, and other users of transportation services.

In doing so, we've established a users group that meets twice a year to discuss automation issues, changes in regulations and new shipping requirements before the Federal Maritime Commission and to establish direction for Transax in the development of additional services.

This electronic users group has already invested millions of dollars in hardware, software, training and the creation of tariff data basis. Electronics for filing is a reality today and the majority of the filings currently being received by the Federal Maritime Commission could be interfaced into an FMC internal auditing or examination procedure.

We have reviewed the 31 questions that this committee has established in the Congressional Record concerning the licensing of Federal data basis. We believe that those questions are pertinent as they relate to the licensing of Federal data basis, and its role of private industry.

However, we see distinct differences between the treatment of documents and final requirements before the Security Exchange Commission and the Patent and Trademark Office on the one hand and the Federal Maritime Commission on the other.

Unlike the Security Exchange Commission and the Patent and Trademark Office, electronic filing and dissemination before the FMC already exists. It's been in operation for over 4 years. It's been proven reliable and the marketing of the commercial services has been successful.

The tariff document is not a standard Government form like you would find before the SEC or PTO. It is a working document that provides the prices and services offered by each carrier in a freely competitive environment.

As a working document, the rates and charges are changed on a daily basis depending on the nature and cargo movement in each trade. As such, the ability to obtain this information electronically is more and more in evidence. Traditional methods of distribution by mail, post office, and the courier services are proving inadequate and may take weeks to disseminate this information.

We estimate at this time that there are 3 million commercial searches a month in tariffs on file at the Federal Maritime Commission and hundreds of private libraries maintained worldwide by different users. The SEC and the Patent and Trade Office do not have or are not part of an internal marketing information network.

Additionally, the tariff may be copyrighted. Original work and the formation and development of tariff structure and rates may be copyrighted. This is currently being reviewed by the courts today. However, there is no clear decision. We believe that the dissemination of this information is public and therefore not subject to the copyright provisions.

We believe that since tariff filing has already been proven on a commercial basis, the FMC could benefit from existing technology and services. The appointment of a single contractor would tend to provide a government monopoly, thereby eliminating firms currently operating and providing services in this freely competitive environment.

The appointment of a government monopoly would have the detrimental affect of further delaying automation by many years. It is common in this automated industry to wait for future developments that have been announced and not proceed along with current available services, thus delaying implementation and expansion of current services.

So, we believe that the FMC would be able to automate many of its functions through the use of a contractor which would not prove difficult or costly by adopting standards compatible with existing services. Also, the FMC could be of aid to current services by developing guidelines for future developments and specifying interfaces to Government files.

We do not believe that they need to reinvent the wheel by redeveloping electronic filing services or dissemination services which already exist and have proven commercially viable.

This would also have the affect of automating many functions within the FMC in the near term without costly development and planning operations at a fraction of the cost.

Additionally, development would be needed for internal use at the Federal Maritime Commission which will not have any commercial applicability.

So, we applaud the FMC and support their initiative to provide an advisory committee. We believe it's constructive and will be the fastest approach to automating tariffs internally at the Government.

We did not attempt to deal with legal issues pertaining to Federal data base automation. What we attempted to do was provide information on existing services including market and commercial issues before the Maritime Commission.

We hope this information is useful. Gil and I will be available for any questions.

[The prepared statement of Mr. Putnam follows:]

TESTIMONY OF

TRANSAX DATA CORPORATION

AUTOMATED ELECTRONIC TARIFF FILING
AND INFORMATION SYSTEMS (ATFI) - AT THE
FEDERAL MARITIME COMMISSION

Mr. Chairman, members of the Subcommittee, I am Dean R. Putnam, Vice President of Carrier Systems Marketing for Transax Data Corporation. Transax Data Corporation is a private investor-owned company located in Falls Church, Virginia. Transax is the largest maritime tariff publisher in the U.S. and provides a tariff filing service which accounts for more than 50% of the daily tariff filings at the Federal Maritime Commission. I am joined by Henry L. Gilbertson, a member of Transax's Board of Directors and former President of Sea-Land Industries, now retired.

Transax is here to support the need for automation of the Federal Maritime Commission (FMC) tariff library. We believe that the FMC, as a regulatory agency, provides a vital role in international maritime transportation. Automation of the tariff library would increase the efficiency and productivity of that agency.

Although the automation of the FMC is at issue today, the private sector maritime industry, including carriers, conferences, shippers, and information companies, have been committed to tariff automation for several years. The private sector has spent millions of dollars in the development and use of electronic tariff filing and page retrieval. Mr. Chairman, I believe that I understand the automation issue at the FMC and in the course of this testimony will relay to the Subcommittee the status of tariff automation in the maritime industry and the market forces at work.

The history of maritime tariff automation is as follows. Transax, in 1980, pioneered the development and commercial acceptance of electronic tariff filing. This service is now used by most major U.S. flag carriers, independent carriers, and the maritime conferences operating in the North Atlantic and TransPacific trade routes. Today, maritime carriers, conferences and tariff publishers are electronically filing tariffs from New York, San Francisco, Florida, Los Angeles, Seattle, Tacoma, Hong Kong, Manila, London, and Brussels.

Unfortunately, the FMC does not yet benefit from this electronic filing system because the electronically received tariff page must be converted into a paper document before it is submitted to the FMC to be processed, analyzed, and cataloged into a large paper library.

The development of the software necessary to enable electronic tariff filing has been difficult. The tariff must state the price, terms and conditions for the shipment of specific goods. The tariff document must meet minimum standards as required by the FMC but no standard tariff form exists. This is because the tariff is also used by the maritime carrier industry as a marketing document for international publication and distribution. Communications software had to be designed to guarantee that the text, numbers, and custom graphics would arrive at the Federal Maritime Commission just as they were electronically authored by each carrier or conference from their worldwide offices. Electronic transfer of information is sensitive to communications line disruptions, and if the error checking software is not sophisticated and comprehensive, a figure could be transposed, a commodity description garbled. A tariff is also a legal document which sets forth the terms, conditions, rates and charges that each conference or carrier is obligated to charge regardless of error.

Mr. Chairman, I am not attempting a discourse on communications software. I want to indicate to the Subcommittee that electronic filing of maritime tariffs was not developed overnight. The technology requirements, which appear simple, require a great deal of sophistication. Electronic tariff filing to the FMC has been developed and enhanced over several years by Transax and a significant carrier user group. Transax, as a private sector company, has invested several million dollars in the development and marketing of this service with the ultimate goal of providing electronic dissemination of tariff information to the shipping industry. The carrier and conference user group has also invested over a million dollars in equipment, software, mainframe interfaces, the building of electronic tariff data bases, and in training personnel. We believe that the focus of the Federal Maritime Commission automation issue should be on the internal automation of the FMC. Restated, we believe that, because electronic tariff filing is a reality today, and is supported and used by so many carriers and conferences, the FMC should respond accordingly and interface with this electronic filing service.

Mr. Chairman, Transax has reviewed the list of 31 questions as published in the Congressional Record of March 14, 1984. We believe that these questions summarize the public policy issues related to the license of a federal data base. We have also reviewed testimony given before this Subcommittee on April 29, 1985 by the Information Industry Association on federal data base automation issues. We believe the Information Industry Association's testimony is pertinent and appropriate in describing the private sector's potential role in working as a partner with a federal agency. However, we believe that the Subcommittee should be aware of some of the distinct differences in issues between the Securities and Exchange Commission (SEC) and the Patent and Trademark Office (PTO) on the one hand, and the Federal Maritime Commission on the other.

1. Unlike at the SEC or the PTO, electronic filing and dissemination of tariff information at the FMC already existed prior to the federal agency's move toward automation. The private sector, including maritime carriers and conferences, has developed a proven filing and dissemination system during the last four years. Substantial investment has been made in the system by the developers of these systems and even more substantial investment has been made by the Transax user group.

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2. The tariff document used by the Federal Maritime Commission is not a standard government form. The carrier must meet certain FMC minimum standards, but each carrier individualizes the tariff document to differentiate his services from those of a competitor. The document serves not only as a regulatory document but as a marketing document for each carrier or conference. As a marketing document, the tariff is used as a pricing contract by stating the terms and conditions under which transportation services are provided. It is estimated that over 3,000,000 commercial tariff searches take place each month in hundreds of tariff libraries worldwide. The SEC and PTO use government forms that are not developed in the same manner, and are not part of an international market information network.

3. Each tariff document and the carriers' authorship of the tariff may be protected under U.S. copyright laws. The courts are now reviewing this issue. The information contained in the document once it has been filed with the FMC is public information but the graphic design and textual placement of copy, created by each carrier or conference, may allow each tariff document to be copyrighted. The SEC and the PTO documents are not subject to this law because their document is a standardized government form.

4. The private sector maritime industry has invested a substantial sum of money in the development of electronic tariff filing and has, more recently, developed tariff retrieval systems on a commercial basis. Therefore, electronic tariff filing and information dissemination is a reality within the maritime industry today. In fact, approximiately fifty (50%) percent of all tariff amendments received by the FMC on a daily basis are electronically filed via existing commercial service. In addition, electronic dissemination of tariff information has already been developed and successfully marketed by the private sector and is available worldwide.

Since tariff automation is commercially proven, the Federal Maritime Commission could benefit by taking advantage of existing technology and services on a contractual basis. We do not believe that the taxpayer would achieve significant value if the FMC were to establish a tariff filing and dissemination systems. A decision by the FMC to select a single contractor or to license electronic tariff filing and dissemination would have the tendency to create a government monopoly, thereby, directly eliminating present businesses which are now providing the services in a freely competitive environment. The existence of such a monopoly would have the detrimental effect of delaying further tariff automation significantly, perhaps by years.

The development of an electronic tariff library and/or archive system at the FMC should neither be difficult nor cost the American taxpayer millions of dollars. If the FMC were to establish standards compatible with currently available electronic tariff filing and dissemination services, and provide guidelines for future development, the taxpayer would not be burdened by government costs for reinventing the wheel. Additionally, the FMC could achieve its tariff automation goal in the near term at a fraction of the cost of new systems development.

We believe that the FMC's recent proposal to set up an Automated Tariff Filing and Information System (AFTI) advisory committee is a wise decision. We know that the FMC is aware of the maritime industry committment to tariff automation. The proposed AFTI advisory committee can start constructive discussions and near-term implementation of tariff automation within the FMC.

Mr. Chairman, we have not attempted to deal with the legal issues associated with federal data base automation. We believe that we could give useful information to the Subcommittee on present market technology and forces already in play and the commercial issues related to the tariff document. We hope that this information has been useful. Both Mr. Gilbertson and I are available for any questions. Thank you.

Mr. **Kleczka**. Fine, thank you for your statement, Mr. Putnam.

Mr. Putnam, you indicated that you think it's ill-advised for FMC to go into this new system. You liken it to remaking the wheel. However, you do applaud the formation of the advisory committee.

My question to you is what happens if the advisory committee comes out with the recommendation to go full steam ahead?

Mr. **Putnam**. That is a very difficult question to answer. It depends on the direction the FMC takes.

The creation of a monopoly situation would definitely deter the future development of additional types of information services. Mr. Carey stated that the FMC's data base is one of the largest in the world. I would like to also add to that statement it's probably the most highly used. We estimate that there's over three million searches in that data base.

So, there is room for a number of private firms developing information services for the public on a commercial basis. It need not burden the taxpayer for reinventing what has already been accomplished.

Mr. **Kleczka**. Now, the Transax system is up and operational. Does it contain all the tariff filing that FMC is charged with?

Mr. **Putnam**. No, sir. The Transax system only contains tariffs that have been compiled and filed by the user group. That is an extensive user group and probably 60 percent of all filings today can be captured through that system.

Mr. **Kleczka**. Are there other services providing automated service for the balance of the 40 percent?

Mr. **Putnam**. There are other services providing automated filing services. The other 40 percent could be obtained through 100-percent filing agreements with the carriers.

The carriers today only file the portion of the tariff changes that need to be received by the Commission on the same day. We are attempting to get 100 percent filing participation by most of the carriers and most of our customers are going along with that idea.

Many of the carriers still need to commit to 100 percent filing to keep that data base up to date. It's a cost issue more than a dissemination or public information issue.

The alternative cost for putting 200 sheets of paper in an overnight courier is $15 versus communication costs in the neighborhood of 25 to 50 cents a page for electronic filing. We believe the cost issues of filing will be irrelevant when compared to the benefits derived from an electronic information system.

Mr. **Kleczka**. Can't the Commission argue that there is no centrally located place where 100 percent of the filings are commercially available, thus we should do it ourselves.

And, Mr. Becker, if you want to respond, or Mr. Putnam.

Mr. **Becker**. I'll be glad to respond because RATES is 100 percent of the data base, and that's why we went back and put that whole data base together, starting in 1984.

Mr. **Kleczka**. So, you do have on-line 100 percent of all the filings. All the documents that are at FMC you have?

Mr. **Becker**. Well, I have roughly 600,000 pages of tariff information in our file, and I don't know whether we have every document the FMC has, but we have every document that relates to vessel operated tariffs.

Mr. **Kleczka**. OK. Mr. Putnam indicated that his system had cost of roughly millions of dollars. Can you give us a little better picture as to how much you have invested? And, then I'd like to ask Mr. Becker the same question.

Mr. **Putnam**. Yes. The marketing and development end is over $3.6 million as of January of this year.

Mr. **Becker**. We have—we've not finished our investment. It's not yet at that stage where it's profitable. We calculate that the threshold of entry into this business is very significant. We're looking at between—somewhere between $6 and $10 million as an investment.

Mr. **Kleczka**. Now, Mr. Becker, you indicated that you support the FMC proposal. Is that only for internal usage and not dissemination purposes?

Mr. **Becker**. Well, we support the idea of the FMC investigating what's going on in the market and streamlining what they are doing. We think it's in an evolutionary stage. There have been lots of developments in the private sector in the past few years and it really hasn't gotten to the FMC yet.

So, I guess what I would see in the future would be some kind of orchestrated cooperation between the private sector and the FMC accomplishing the goals that are set down in the various papers on the subject.

Mr. **Kleczka**. However, neither of you gentlemen are—nor were representatives of your firms—appointed to the advisory committee. So, how do you anticipate having input between now and the final report from FMC?

Mr. **Becker**. Well, we appreciate being invited here and we're optimistic that the FMC in its deliberations and its committees will take a very hard look at what we're doing.

Mr. **Kleczka**. Have either of you gentlemen approached the officials at FMC to discuss the contract system, a commercial contract system?

Mr. **Putnam**. No, sir.

Mr. **Becker**. No, we have not sought to tie the FMC to any contract. We've discussed with them our business—what we're doing. There are other arms of the FMC which are interested in our service and we're dealing with them, and I might ask Jim Devine, perhaps he might want to add something. Jim is our marketing manager.

Mr. **Kleczka**. Mr. Devine.

Mr. **Devine**. Yes. Though it is a small agency, it does have various responsibilities, and one branch of the FMC in policy and planning has actually begun usage of the RATES system to look at the tariffs and, I believe, do some competitive analysis of the shipping trades worldwide. They've used other data provided by the Journal of Commerce's PIERS service, which is shipping data. Mr. Becker earlier referred to it.

Mr. **Kleczka**. OK. Mr. Gilbertson, I'm told you have a lot of experience in the maritime industry. You don't have to respond to that, but what do you hear about FMC's automation plans from others in the industry?

Mr. **Gilbertson**. I'm obviously not here as an industry spokeman, but I did contact some carriers in the industry and dealing in a so-called expert environment.

The information, when you talk to the carrier about automation at the FMC, the carrier sees that as the business of the FMC being able to receive electronic filings to store the data electronically and to retrieve it for its own internal use electronically, and when you talk to carriers, that's what they mean when they say would you like to see the FMC automate.

And, the response under that definition was wholeheartedly, yes, they would like to see the FMC automate.

The next question is would you pay something to see that happen?

The answer was, no, we shouldn't have to because traditionally—now, if you avoid handling 600,000 pieces of 8x11.5 paper a year with 300,000 to 500,000 characters on every page and you convert that to an electronic reception and storage format you should pick up enough savings to pretty much satisfy the investment and hardware and the construction of the software. About 60 percent of the total volume is available electronically today, and to the extent that people and staff are involved in handling that paper, they could disappear.

The hardware and software involved to fill that definition of automation is not complicated. It's a data base. It's a word-processor-type of approach. It's not terribly complicated hardware or software.

They think that the savings that would be realized by an immediate conversation of 60 percent of the in-bound filings, dealing now probably with an average change—50 characters per change rather than 5,000 characters per page, would probably be successful for the most part—should for the most part fund the program through labor savings.

Their attitude is somewhat different about the business of provision and dissemination of data. I think the general feeling there is that that's a can of worms. That the FMC does not really understand what is involved in the needs of the user, both carrier and commercial user. That those are complicated programs. Very customized in some areas. They are not—they do not standardize themselves.

I don't think they perceive the FMC as probably being able to develop the kind of capability without an inordinate cost to serve that need, and I don't think they perceive any need is there. There are four firms up in the business—all substantial, good credentials, adequate backing—that are in that business right now. And, I don't think that they perceive that there's any need for the FMC to enter into that, nor would it be a successful commercial venture for the FMC in competition with four established services.

All of them felt that it would be wise of the FMC to appoint an advisory group, which I understand is in process, and that probably a whole lot of the expertise necessary to assist the FMC task force was available in that group or could be made available.

And, as a sideline, we, of course, would like to be included in that group. We have a substantial amount of expertise. Mr. Becker's firm has a substantial amount.

In the aggregate, within that group, if the proper people were chosen there are millions of dollars worth of talent who have already gone through all of this mechanism and that could probably save the FMC from making any large errors or becoming involved in financial obligations that were beyond their means to satisfy.

Mr. **Kleczka**. Or, as you point out that the agency's annual budget is $11 million and using your figures, Mr. Becker, using the top figure of $10 million would have to double the agency's budget to provide for this new electronic system.

Go ahead, sir.

Mr. **Becker**. I'd just like to say, Mr. Chairman, on the point of participating in the advisory committee I think that would be a bit difficult if on the one hand we were seeking to advise the FMC what it ought to do and on the other we were trying to sell to them. So, I think we could be a resource to that committee, but probably not a member of it.

Mr. **Kleczka**. The fox watching the chickens.

Mr. Becker, you indicated in your statement that you would suggest use by FMC of a facilities management contract. In fact, Mr. Putnam, you also indicated the same thing.

How would this type of an idea work?

Mr. **Becker**. Well, we could, or anybody could, any contractor could make available the data base to the FMC.

Mr. **Kleczka**. For a price. For a fee.

Mr. **Becker**. For a price, right, and it could go out for bidding. We could or anybody else could provide the equipment and the computers—maintain that equipment deal with the software that was necessary. And also work on an evolutionary basis, because one of the things we find in dealing with this data base is that it is evolutionary, and we're constantly changing the software to meet the needs of clients.

So, we think that the FMC by going to the private sector could get really everything that it wants and it might not use just one company. It might use two or three.

Mr. **Putnam**. Yes, the FMC's use of the data can be broadly defined in two major areas. The requirements of analyzing the rates on a trade route to ensure that the trade route stayed adequately protected and the users of those transportation services are not discriminated against.

They also have the filing requirements which are in place when the carriers decide to change their tariff rates to services provided. Under the Transax filing system, the carrier composes or compiles the tariffs and files it directly with the Commission. There is no deviation or error in the data and the Commission could use this data for examination purposes.

So, we see basically on the examination end the data should be inputed or controlled by the carrier or the filer. On the data information end, for trade studies and so forth, they could actually have data inputed from other sources.

Mr. **Kleczka**. Does FMC charge for filing a tariff?

Mr. **Putnam**. No.

Mr. **Kleczka**. OK, when anyone requests information from FMC is there a fee for that type of——

Mr. **Putnam**. There is a fee schedule established for that.

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Mr. Kleczka. If in fact they would have to buy the service from a commercial enterprise they could recoup some of those costs, other than the internal things that they need from this fee structure.

Mr. Putnam. That's correct.

Mr. Kleczka. The last question for both of you gentlemen—when the hearings are completed this committee will issue a report and probably will include recommendations to the agencies. What would you like to see this committee recommend?

Mr. Putnam. I would like to see the committee recommend that automation for internal uses of this information proceed at the Federal Maritime Commission by the use of existing services or the interface with existing services that are already commercially available.

As far as the dissemination of this on a commercial basis, I do not believe the Commission has the expertise nor would they wish to fund the development—constant development of programs and custom programs that the user requires.

As far as the Commission automating internally, it would be of great benefit to themselves and to the industry and to set standards for future development.

As far as dissemination, I think that's best handled in the private sector.

Mr. Kleczka. Thank you. Mr. Becker.

Mr. Becker. Well, I'd agree with that and I would like to see this committee recommend to the FMC that it really investigate what's going on in the private sector.

I think the industry that the FMC oversees is—puts the FMC in a unique position vis-a-vis the SEC and the others because they have mature services available to utilize, and we'd like to have you urge them to utilize those private services.

Mr. Kleczka. Mr. Gilbertson.

Mr. Gilbertson. Well, I know Mr. Carey has some budgetary restraints, but I agree with Mr. Becker. I think there are experts in the area that are available that would be happy to be a resource to the FMC without drawing on their per diem, just as a matter of invitation. No obligation.

Mr. Kleczka. Mr. Devine, any closing recommendations?

Mr. Devine. Yes, I'm substantially in agreement, and as Mr. Becker said, there's an awful lot out there in the private sector for the FMC to utilize and we're just interested in seeing them give it a try.

Mr. Kleczka. And, let's not remake the wheel.

Mr. Devine. Absolutely.

Mr. Kleczka. Very good. Thank you all for appearing today and thank you for your very interesting testimony.

At this time we call the last panel of the afternoon.

Mr. Gerald Meyer, Associate Commissioner for Management and Operations, Federal Food and Drug Administration; Mr. Glenn Haney, Director, Office of Information Resources Management, U.S. Department of Agriculture; and Mr. Bryant Benton, Associate Director for Management Services, Bureau of the Census.

I believe Mr. Benton will be accompanied by Mr. Jim Curry, Chief, Data Access and Use Staff.

Mr. Meyer, you're the leadoff hitter this afternoon.

STATEMENT OF GERALD F. MEYER, ASSOCIATE COMMISSIONER FOR MANAGEMENT AND OPERATIONS, FOOD AND DRUG ADMINISTRATION

Mr. MEYER. Thank you, Mr. Chairman.

I appreciate the opportunity to appear before you with my colleagues from the Bureau of the Census and the USDA.

If acceptable to the committee, I would offer to submit my statement for the record and only make a few informal remarks.

Mr. KLECZKA. Yes, sir, we'd appreciate that. Thank you.

Mr. MEYER. First, FDA has an electronic bulletin board as a result of having contracted for electronic mail as the cost effective means of communicating with our 10 regional offices, 22 district offices, and about 90 resident posts throughout this Nation

So, it required very little additional cost and effort to use this arrangement to also provide more information about the FDA through an electronic bulletin board. What we have on that electronic bulletin board, for the benefit of those who subscribe to it, is information about recalls of products which present a problem, enforcement actions, press releases on important product information, new product approval information, summaries of Federal Register proposals and decisions, congressional testimony and speeches on policy issues, technical information for health professionals, and selected consumer information that we think has widespread use.

As you well know, FDA is responsible for the safety and effectiveness of products which account for almost 25 cents of every consumer dollar.

The information that we have on that electronic bulletin board is easy to use and relatively inexpensive for the organizations that use it. We find it increasingly useful to the health professional community, to scientific and academic groups, and to the private sector and the news media.

The information we place on our bulletin board is not proprietary and is available to anyone.

Your invitation today also asked us about potential innovations in product review using electronic submission of data and electronic access to data.

FDA currently has several tests ongoing and has conducted some in the past. These include electronic submission of data to us in a variety of different forms and electronic access to industry data by our reviewers. These tests have had mixed degrees of moderate success.

To some extent this is because of the variety and kind of data that is submitted to the Food and Drug Administration. For example, food additive petitions, and new drug approval applications can be submitted for the most part in data and text. But sometimes they include chemical formulas and/or methods and processes which may be presented in graphical form and then there are limitations.

Medical device 510-K applications and premarket approval applications often involve product design drawings and specifications.

For that sort of thing the electronic submission of such data is very much in the developmental stage.

We have not found a perfect solution that will accommodate all of our needs, but I believe an exploding technology involving such things as optical laser disks which have emerged in the last few months will probably solve that problem for us. And ultimately I am persuaded this techology will be a more efficient and less costly review.

With those few informal remarks, Mr. Chairman, I'll be pleased to answer any questions you have.

[The prepared statement of Mr. Meyer follows:]

DEPARTMENT OF HEALTH & HUMAN SERVICES
Public Health Service

Food and Drug Administration
Rockville MD 20857

STATEMENT

BY

GERALD F. MEYER

ASSOCIATE COMMISSIONER FOR MANAGEMENT AND OPERATIONS

FOOD AND DRUG ADMINISTRATION

PUBLIC HEALTH SERVICE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE

SUBCOMMITTEE ON INFORMATION, JUSTICE AND AGRICULTURE

COMMITTEE ON GOVERNMENT OPERATIONS

HOUSE OF REPRESENTATIVES

JUNE 26, 1985

FOR RELEASE ONLY UPON DELIVERY

Mr. Chairman:

The Food and Drug Administration (FDA) is pleased to participate in this hearing and we welcome the opportunity to describe our use of electronic means to disseminate information to the public and to expedite the processing and review of new product applications.

FDA's impact on the country's economic life is extensive, as indicated by our regulation of products accounting for approximately 25 cents of every consumer dollar spent. Because of that impact, we decided to seek out new, more effective ways of communicating with people affected by products we regulate. We believe that the proliferation of small computers has created a quantum change in the communications opportunities available to the Agency. Since the age of inexpensive, easily accessible and instantaneous electronic communications is here to stay, FDA decided to explore ways of utilizing these technologies in fulfilling our mission.

Electronic Bulletin Board

FDA established its electronic bulletin board on a trial basis in January 1983. Prior to that time, FDA had leased an electronic mail system to communicate with our field offices. As part of the electronic mail agreement, ITT-Dialcom, the contractor, offered the electronic bulletin board service at a very small cost. Under the offer, ITT-Dialcom provided a "blank" electronic bulletin board format, to be maintained by FDA; ITT-Dialcom would sell the information on the bulletin board to the public for a fee. FDA's Office of Public Affairs (OPA), which is responsible for channelling information to the public, was given charge of the electronic bulletin board.

Objectives

FDA has always sought to promote awareness and understanding of health matters by informing the public about key issues such as the safety of foods and food additives, the benefits and risks of drugs and devices, important product labeling issues and recalls and other potential emergency situations. We tested the electronic bulletin board as a means of communicating with the news media and ultimately the public, as well as the practicing health professional community, scientific, academic and organized consumer groups. The test had the following objectives:

- To provide an alternative to traditional mail, especially for organizations that have electronic communications with their constituencies;
- To provide FDA with another avenue for rapid dissemination of time-sensitive information requiring wide dissemination; and
- To reduce, in the long run, mailing and handling costs for hard copy documents by disseminating information electronically.

In developing the bulletin board, FDA held meetings with health professional and consumer groups allowing them to influence the content of the system, making it compatible with our mutual needs. For example, we negotiated with the contractor to allow no cost redistribution of FDA material by subscribers; we worked to reduce subscription costs from $100 per month to the current $25 per month; and, we expanded the numbers and types of documents available.

Electronically Available Documents

When the electronic bulletin board was started in 1983, only two kinds of documents, press releases and FDA's weekly recall list (the Enforcement Report), were available. Now, in addition to press releases and recalls, the electronic bulletin board offers the Drug and Device Product Approvals List, the Drug Bulletin, the FDA Consumer (excerpted), veterinary medicine news, summaries of FDA Federal Register documents, Congressional testimony and speeches delivered by FDA officials.

All of these documents are put on the electronic bulletin board at the same time they are made available to the public through other channels, such as in hard copy through various FDA offices, or by recorded message, as is done with press releases. In addition, the Drug and Device Product Approvals List, the FDA Consumer, the Enforcement Report and Federal Registers are all available in hard copy by subscription through either the Government Printing Office or the National Technical Information Service.

Operation of the Electronic Bulletin Board

FDA's Office of Public Affairs electronically receives information for the electronic bulletin board from other FDA offices. There is no need to retype the document. Once a document has been transmitted to OPA, it is proofread, electronically reformatted to fit the computer's parameters, and then sent to a file on the computer. Once it is in the computer, the document is proofread again and then put on the electronic bulletin board itself.

There is very little cost in the transmission of documents to the electronic bulletin board. An average, two-page press release takes approximately one minute to transfer to the electronic bulletin board, at a cost of $0.14 to

FDA. Thus we realize savings not only in postage and paper, but especially in person-hours for handling.

Documents are easily accessed from the electronic bulletin board by subscribers--once an individual has "signed-on" to the system a menu appears listing all of the documents that are available. After choosing a particular file, the user can then search that file using a keyword, scan through the titles, or read the documents within that file. Users can then mail the document to another ITT-Dialcom mail box, saving time and money by eliminating the need for others in the same organization to read the electronic bulletin board to find the same document.

Currently, a variety of organizations subscribe to the electronic bulletin board, including drug firms, food retailers, health care services, public relations firms, the media, and Government agencies.

Proprietary Rights

The FDA bulletin board does not contain proprietary information, and FDA's bulletin board vendor does not have exclusive rights to that information. FDA's agreement with ITT-Dialcom allows any Dialcom customer (including another commercial bulletin board vendor) not only to gain access to the information, but also to redistribute it. All of the information on the electronic bulletin board is available to any organization, public or private, for redistribution both electronically and in hard copy. ITT-Dialcom is not responsible for the content of material on the electronic bulletin board, nor do they have any rights to that material. FDA holds responsibility for the accuracy of all data available directly from ITT-Dialcom, while any organization that redistributes that data is responsible for its accuracy. FDA hopes that its information will be widely distributed throughout a network of bulletin boards in order to reach a variety of audiences.

FDA may also send its bulletin board information directly to other bulletin board vendors if that procedure becomes worthwhile. In summary, FDA's bulletin board arrangement with ITT-Dialcom is not a monopoly for ITT-Dialcom. Our contract has been designed to maintain open and equitable access to public information.

Potential Innovations in Product Review

In your letter of invitation you also asked that we discuss FDA's experimentation with the electronic submission of product applications, such as new drug applications (NDAs) and premarket applications (PMAs) for devices.

For example in the drug area, NDAs for marketing of pharmaceutical products are currently submitted on paper to FDA for review. The typical NDA fills 100 to 300 volumes at 250 pages per volume. With multiple copies of each volume required to facilitate parallel technical reviews, the problems of storage, handling, and retrieval have been overwhelming and the submission burden on the industry has been substantial. Clinical data, that is, summaries, tabulations, and individual patient case report forms account for nearly three-quarters of each NDA. In recent years, efforts have been directed at controlling the unwieldiness of clinical data submitted on paper. Last February, the Department of Health and Human Services issued final regulations streamlining the drug approval process. These revisions, known as the NDA rewrite, reduced routine paperwork submissions by as much as 70 percent and are expected to cut the new drug approval time by an average of 6 months while maintaining high safety standards. Several other non-regulatory approaches have also been investigated.

The Agency investigated microfiche and magnetic tape, but neither proved to be satisfactory for review purposes. Investigations currently underway address the review problem by relying on access to the submitter's data in the submitter's computer. Such access eliminates FDA's computer storage problems and provides the capability of manipulating the clinical data into formats not presented in an NDA.

Three pilot projects have been designed to test the efficiency and quality of this option. One test provides direct electronic access to data from an ongoing protocol; a second test relies on reports provided by the submitter upon request of the FDA reviewer; and the third test is a direct comparison of NDA reviews done using clinical data submitted on paper versus data submitted in electronic form.

The Agency is also investigating optical laser discs as another alternative to paper submissions. This option is in the early stage of investigation, and no proposals for pilot testing have yet been developed.

Conclusion

In conclusion, FDA has discussed two opportunities presented by the widespread availability of computer technology. First, computer technology may reduce the cost and increase the efficiency of the product review process. This offers the hope of safer products, which will be available sooner and at lower costs.

Second, computer technology has enhanced FDA's communication with the public as shown by the 2-year test of the electronic bulletin board. As a result of this test, in October 1984, FDA Commissioner Young decided to expand the operation of the electronic bulletin board. He directed staff to improve its format, increase the volume of information it handles, and expand its audience by promotion to additional consumer organizations having electronic capability.

Mr. Chairman, that concludes my statement, I will be happy to answer any questions the Subcommittee may have.

Mr. Kleczka. Thank you, Mr. Meyer. Mr. Haney.

STATEMENT OF GLENN P. HANEY, DIRECTOR, OFFICE OF INFORMATION RESOURCES MANAGEMENT, U.S. DEPARTMENT OF AGRICULTURE

Mr. Haney. Thank you, Mr. Chairman.

My name is Glenn P. Haney, Director of the Office of Information Resources Management with the Department of Agriculture.

With your permission I, too, will simply highlight the statement that I've presented to you for the record.

Mr. Kleczka. You must have been before our committee before. Thank you very much. [Laughter.]

Mr. Benton, what do you plan on doing? [Laughter.]

Mr. Benton. It seems to be a wave.

Mr. Kleczka. Mr. Haney.

Mr. Haney. We appreciate the opportunity to be here to tell you a little bit about the Department of Agriculture's Electronic Dissemination of Information.

We have been involved in the dissemination of information, both the collection and dissemination of information to the public for many years. It's a traditional role for the Department of Agriculture.

We have essentially depended upon the standard print media as the means of doing this in providing both hard copy publications and mail distributions.

This method is costly and it does not reach all the people that we would like to reach, particularly with our perishable or time-sensitive data.

With the existence of the cost-effective computer-based systems in communications, we now have the opportunity to provide alternatives to the traditional media.

A few years ago a number of our agencies did experiment with some efforts at disseminating some of their specific information that previously had been made available only in hard copy. Our experience with those trials helped us to broaden our thinking to include new types of data that could be disseminated for the first time.

For example, the foreign agriculture service trade leads could be disseminated electronically and be made available almost immediately to those who needed them today and, of course, tomorrow the information was out of date.

Through this experience we discovered there are new types of users. Traditionally we were aiming our information at farmers, rural communities, and agriculture related organizations. Now we see a new marketing and business potential and the demand for the data has increased significantly.

We learned some lessons from our pilot operation that caused us to reevaluate our original approach. First—our first approach was to look at what the pilot tests had done. They had aimed their efforts primarily at seeking a better way to disseminate information and they had not pursued a competitive bidding process.

We have discovered that other organizations that are in the business of marketing information felt that they should also receive our data directly from our agencies. They wanted the same service there competitors were receiving.

This really placed us in a dilemma. We couldn't continue to increase our resources assigned to the dissemination function. We either had to retreat on our electronic dissemination or find a better method to satisfy the public need. To pursue the individual agency approach was making it difficult for users who had to actually access two or three or four different services.

Multiple services was not the answer. It was eminently apparent to us that a single resource or a single service was better, so we proceeded to select a single computer-based dissemination service that would support the needs of all of the Department of Agriculture's agencies.

Our objective was to reach the large publishers, news services, farm organizations, trade associations, and the commercial electronic information and videotec services.

We wanted to offer a simplified bulk data or wholesale type of data dissemination service. We proceeded through a competitive procurement and selected Martin Marietta Data Systems to provide the required service to us.

We had seven key agencies within the Department involved in this project. I will not enumerate all of these agencies.

The role of the Office of Information Resources Management was to coordinate that activity.

The system we now have is primarily designed to disseminate perishable or time-sensitive data. Examples of such agency releases are daily market reports, weekly and monthly crop and livestock statistical reports, periodic economic outlook and situation reports, USDA news releases, foreign agricultural trade leads, export sales reports, and weekly world agricultural production and trade roundups.

The computer-based system had to meet several criteria:

One, all organizations would have to have equal access to it.

Two, the vendor would not have any unfair advantage over others by accessing the data for resale on his own.

Three, access by users would have to be sufficiently easy to encourage broad use.

Four, the system would support various types of USDA data in a single format.

Five, cost of the system would be reasonable for all users, and USDA would retain control over the data.

By that we mean that we specify what data will be maintained, when it will be released and when it will be deleted from the system.

Mr. Chairman, in summary I would like to point out a few key features of our system that differentiates it from some of the others covered today.

We focused on the information requirements of the potential users of the system. We discovered that the users wanted everything from 1-line market news reports to a 40-page economic outlook and situation report.

We specified a single system that would meet all of those kinds of requirements.

Another important feature is the automatic transmission of reports to users immediately upon release by USDA. With our system, organizations that are seeking information can specify the kinds of information they want, which is then automatically transmitted to them immediately upon release by USDA.

This automatic transmission solves another problem for us. Some of our data, such as the periodic Crop Production Reports have great value at the moment of release. Automatic transmission allows us to guarantee that all who require it receive it at the same time.

The user fee concept was adopted by USDA a few years ago for those requesting printed reports and publications in order for the Department to recover printing and distribution costs. This same policy has been applied to the electronic system.

The minimum fee for a user is $150 a month. Martin Marietta will return to USDA 10 percent of the total charges to the commercial and private users of this system to help defray our cost of using the system.

From the viewpoint of our agencies, they are now able to reach the broadest possible community of end users, while only transmitting the data once.

One last point: The system will provide us with a tool to measure the demand for our data.

Based on statistics we receive from our contractor, we can remove data not accessed and place greater emphasis on the kinds of data that is heavily demanded, and so on.

While our system is not scheduled to go operational until next week, we are most encouraged by the enthusiastic support and response we have received to date.

We feel through a minimum effort on our part, we have developed an approach that provides maximum benefit to all concerned.

That concludes my statement. I will be happy to answer any questions.

Mr. Kleczka. Thank you, Mr. Haney.

[The prepared statement of Mr. Haney follows:]

TESTIMONY OF GLENN P. HANEY
DIRECTOR, OFFICE OF INFORMATION RESOURCES MANAGEMENT
U.S. DEPARTMENT OF AGRICULTURE
BEFORE THE
GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE SUBCOMMITTEE OF THE
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
JUNE 26, 1985

Mr. Chairman, members of the Subcommittee, I appreciate the opportunity to discuss the Department of Agriculture's program for electronic dissemination of information (EDI).

Agencies of the U.S. Department of Agriculture (USDA) have traditionally recognized their responsibility to collect and develop information which is shared with the public as well as with USDA agencies and other federal and state agencies and institutions.

The method of dissemination for many years had been limited to hardcopy publications and mail distribution. This method was costly to us and obviously did not begin to meet the needs of the public for access to perishable or time-sensitive data.

With the advances in technology, cost-effective computer-based systems and communications now provide us with an alternative to the traditional print media. Several of our agencies recognized this as much as three years ago and initiated various independent pilot programs to test the use of electronic methods. The initial emphasis with these pilot projects was to better disseminate information that had previously been made available in hardcopy. However, experience with electronic dissemination has caused us to broaden our thinking to include new types of data that could now be disseminated for the first time; for example, reports that would totally lose significance if they fail to reach the proper audience in a timely manner. More specifically, the Foreign Agricutural Service trade leads could not be distributed effectively through the mail.

We also found that as the existence of our pilot projects became known, new types of users emerged. Traditionally, USDA had focused on the information requirements of farmers, rural communities and some agriculture-related organizations. With the availability of electronic transmission capabilities, a new marketing and business potential became apparent and the demand for data increased significantly. We recognize the importance of data that is readily available, current, and accurate in fostering and supporting a healthy national agricultural industry and promoting a strong marketing position both here and abroad.

Mr. Chairman, the electronic dissemination of information project I'm here to discuss with you today evolved out of the several independent agency efforts to utilize electronic technology for information dissemination. We learned some lessons from the pilot operation that caused us to reevaluate our approach.

First, the selection of a dissemination service by those agencies that initiated independent pilots was done on a small scale and without competitive bidding. Their concern at that time was to test the application and evaluate the public demand. However, other organizations in the business of marketing information felt that they should also receive our data directly from the USDA agencies. These requesting organizations reasonably wanted the same service their competitors were receiving. USDA agencies were facing a dilemma. We couldn't continue to increase our resources assigned to the dissemination function. We had to either retreat from our initial advances in electronic dissemination or find a better method to satisfy the public need.

We also recognized that by promoting independent agency approaches, we were making it difficult for the user community to acquire the data. They had to be aware of and subscribe to multiple services in order to obtain all the USDA data they needed.

The solution for the Department was to select a single computer-based dissemination service that would support the needs of all USDA agencies. Our objective was to reach organizations such as large publishers and news services, farm organizations, trade associations and the commercial electronic information and videotex services who would further enhance the data for their own marketplace and ultimately reach the broadest possible community of end users. We needed to offer a simplified bulk data or "wholesale" type of data dissemination service. We went through a competitive procurement and selected Martin Marietta Data Systems (MMDS) to provide the required service for us.

The seven USDA agencies involved in the selection were: Agricultural Marketing Service, Economic Research Service, Extension Service, Foreign

Agricultural Service, National Agricultural Library, Office of Governmental and Public Affairs, and Statistical Reporting Service, with coordination by the Office of Information Resources Management.

The system is primarily designed to disseminate perishable or time-sensitive data. Examples of agency releases made available through the system are: daily market reports, weekly and monthly crop and livestock statistical reports, periodic economic outlook and situation reports, USDA news releases, foreign agricultural trade leads, export sales reports, and weekly world agricultural production and trade roundups.

The defined computer-based system had to satisfy the following criteria:

- All organizations contracting with the selected vendor to obtain USDA data would have equal access to it.
- The selected vendor would not have unfair advantage over others by accessing the data for resale on its own.
- The method of access by users would be sufficiently easy to encourage broad use.
- The system would support various types of USDA data in a single format that could be easily implemented by the USDA agencies.

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- Cost of the system would be reasonable, both to the USDA agencies and to the organizations acquiring our data.

- USDA would retain total control over the data, specifying what data will be maintained, when it will be released and when it will be deleted from the system.

Mr. Chairman, I'd like, in summary, to point out a few key features of the USDA EDI system that differentiate it from some of the others covered today.

We focused on the information requirements of the potential users of the system. The data that users sought varied from a one-line AMS market news report to a 40-page ERS outlook and situation report. Some releases were text only; some contained extensive tables. We specified a single system that would meet all of these requirements. .

An important feature of our system is the automatic transmission of reports to users immediately upon release by USDA. Some of our data is released on schedule so that those requiring it would know when to request it. However, much of it is not predictable and yet loses value if it is not immediately received. With our system, organizations contracting with MMDS specify the kinds of information they want which is then automatically transmitted to them immediately upon release by USDA.

This automatic transmission feature has also solved another problem for us. Some of our data, such as the Statistical Reporting Service crop production forecasts, have great value at the moment of release. The automatic transmission allows us to guarantee that all who require it receive it at the same moment.

The "user fee" concept was adopted by USDA a few years ago for those requesting printed reports and publications in order for the department to recover printing and distribution costs. The same policy has been applied to electronic delivery of information. Organizations desiring access to USDA data will contract with MMDS for the service. The charge will vary depending on the type and speed of communications desired and the amount of data obtained. The minimum fee is $150 per month. MMDS will return to USDA 10 percent of the total charges to commercial and private users of the system to help defray our cost of using the system.

From the viewpoint of our agencies, they are greatly relieved to be able to effectively reach the broadest possible community of end users, utilizing the various types of private sector systems while only transmitting the data once.

One last point: the system will provide us with a tool to measure the demand for our data. Based on statistics we receive, we can remove data not accessed and place greater emphasis on the kinds of data heavily in demand.

While our system, Mr. Chairman, is not scheduled to go operational until next week, we are most encouraged by the enthusiastic response we have received. We feel that through a minimum effort on our part, we have developed an approach that provides maximum benefit to ourselves and to those who are assisting us in reaching the ultimate users of our information.

Mr. KLECZKA. Mr. Benton.

STATEMENT OF BRYANT BENTON, ASSOCIATE DIRECTOR, BUREAU OF THE CENSUS FOR MANAGEMENT SERVICES, ACCOMPANIED BY JAMES CURRY, CHIEF, DATA ACCESS AND USE STAFF, DATA USER SERVICES DIVISION

Mr. BENTON. Mr. Chairman, I am Bryant Benton, Associate Director of the Bureau of the Census for Management Services.

With me this afternoon is James Curry, Chief of our Data Access and Use Staff of our Data User Services Division.

With your permission, I, too, will abbreviate my comments.

Let me begin by briefly describing the Census Bureau's statistical programs, how we disseminate our statistics and who uses them. This information will provide an appropriate context for a discussion of CENDATA, the Census Bureau's electronically disseminated data base.

The Bureau of the Census is the primary agency of the Federal Government engaged in the collection, compilation and publication of general purpose statistics. It is responsible for taking all of the censuses authorized by law, including those of population, housing, agriculture, retail and wholesale trade, service industries, manufacturers, mineral industries, transportation, construction industries, and governments.

Data collected in these censuses are published, variously, for the nation, states, cities, and counties. Population and housing statistics are also published for Congressional districts, census tracts and blocks.

In addition to the censuses, the Census Bureau conducts sample surveys on a monthly, quarterly, and annual basis. These surveys encompass some of the same subjects as the censuses, providing current information on social and economic conditions.

Users of Census Bureau statistics include the Congress, Federal, State, and local agencies, businesses, academic researchers, news media, community service organizations, trade, professional and minority associations, labor unions, religious organizations, civic groups, students, and the general public. Many users have years of experience in accessing and using data from the Census Bureau's censuses and surveys. Others are first-time users, who are not quite sure where to start.

To meet the diverse needs of such a wide range of users, and data use capabilities, the Census Bureau publishes its statistics in printed reports, microfiche, computer tape, and flexible diskettes. The publications are available for public use in more than 1,350 Federal and 125 census depository libraries.

The public use computer tapes containing statistics from our censuses and surveys are sold by the Census Bureau to anyone who desires to purchase them, and are provided free to the States participating in the State Data Center Program. Commercial firms frequently buy our tapes and repackage them for their customers.

From the foregoing, you can see that the Census Bureau publishes both a wide variety and a great volume of products to meet the data needs of users in our society. The implementation of CENDATA, the subject of my remarks, represented a fine-tuning for addressing two very specific user needs, one long-standing, and the other relatively new.

First, there's been a problem ever since the first Federal statistics were published of getting quick access to data soon after they were released to the public. For example, many news organizations, as well as end users, want such key economic indicators as retail sales, manufacturers' shipments, inventories and orders, and housing starts as soon as they are released by the Census Bureau. Press releases and information on newly released products are also wanted at the earliest possible moment.

The other need that CENDATA was designed to meet, was the desire of many users to take advantage of the significant advances in recent years in end user communications with computers. The increased availability of opportunities for users to interact online with computerized data bases and the explosion of terminals, word processors, and microcomputers, created a natural demand for access to Census Bureau information using these capabilities.

While several commercial vendors offered dial-up value added type services based on selected Census Bureau statistics, no one provided timely electronic access to press releases, new product information, and statistics in a simple information distribution system. To meet these two user needs, quick access to time sensitive information and electronic access to Census Bureau information, the Census Bureau conceptualized a program in 1983 which was to become CENDATA.

Several principles were identified to guide the development of an electronic dissemination system:

First, avoid any schemes that would permit public access to the Census Bureau's computers. This was to prevent both public perception problems and the remote possibility of unauthorized access to title XIII confidential data.

Second, avoid competition with the private sector.

Third, reduce costs to the Government by not having to develop or purchase software, lease computer time, and the like.

Finally, develop a system that would be simple enough for a wide variety of users to access.

The decision was made to determine whether a public- private joint venture to develop an electronic data dissemination system following these principles was possible. In November, 1983, a "Request for Information" was published in the Commerce Business Daily, soliciting expressions of interest by firms in providing Census Bureau data and product information online in a full text format at no cost to the Census Bureau. Of the 19 firms requesting additional information, 2 accepted and now offer CENDATA to the public as part of their regular services.

CENDATA went on the air in August 1984. The Census Bureau determines what is to be included in CENDATA, and when information is to be deleted. We up-date CENDATA directly, on a daily basis, from a stand alone Census microcomputer over the telephone lines to the vendors. The Census Bureau has free access to CENDATA on the vendors' computers and is not charged for updating nor data storage.

Data are transmitted from the Census Bureau in a Bureau determined format which does not require customizing for individual vendors. CENDATA is accessible to all customers of the two vendors that we now have. Users can print, or download—that is, copy—the disks on all or parts of CENDATA.

As data bases go, CENDATA is rather small. Its total size is about 3 million characters which takes about one percent of a standard disk drive on a mainframe computer. For comparison, all of the statistics available from the Census Bureau would add up to hundreds of billions of characters.

While we do not have statistics on the users of CENDATA, through personal and written contact, we know that public, academic, and corporate librarians, State data centers, trade associations, banks, market researchers, other Federal agencies, and investment companies are using this data source. We promote the availability of CENDATA in our newsletters and statistical reports and at conference exhibits and professional association meetings. The vendors promote it in their literature and at their user meetings.

CENDATA represents just one of the many ways that the Census Bureau packages and delivers its information to meet the needs of a wide variety of data users. The use of electronic dissemination does not replace any of the previous ways used to disseminate Census Bureau statistics, nor are there any plans to eliminate any statistics published in paper format that are also available electronically.

This concludes my testimony. I'll be glad to answer any questions you may have.

[The prepared statement of Mr. Benton follows:]

STATEMENT BEFORE THE
SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE
OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

June 26, 1985

CENDATA: Disseminating Census Bureau Data Electronically

Good afternoon, Mr. Chairman. I am Bryant Benton, Associate Director of the Bureau of the Census for Management Services. Let me begin by briefly describing the Census Bureau's statistical programs, how we disseminate our statistics, and who uses them. This information will provide an appropriate context for a discussion of CENDATA, the Census Bureau's electronically disseminated data base.

The Bureau of the Census is the primary agency of the Federal Government engaged in the collection, compilation, and publication of general-purpose statistics. It is responsible for taking all the censuses authorized by law, including those of population, housing, agriculture, retail and wholesale trade, service industries, manufactures, mineral industries, transportation, construction industries, and governments. Data collected in these censuses are published variously for the Nation, states, cities, and counties. Population and housing statistics are also published for Congressional districts, census tracts, and blocks.

In addition to the censuses, the Census Bureau conducts sample surveys on a monthly, quarterly, and annual basis. These surveys encompass some of the same subjects as the censuses, providing current information on social and economic conditions. Monthly and annual statistics on U.S. foreign trade are also tabulated and published by the Census Bureau. County population estimates are prepared annually.

Users of Census Bureau statistics include the Congress, Federal, state, and local agencies, businesses, academic researchers, news media, community service organizations, trade, professional, and minority associations, labor unions, religious organizations, civic groups, students, and the general public. Many users have years of experience in accessing and using data from the Census Bureau's censuses and surveys. Others are first time users who are not quite sure where to start.

To meet the diverse needs of such a wide range of users and data use capabilities, the Census Bureau publishes its statistics in printed reports (an average of 2,000 new titles a year), microfiche, computer tape, and flexible diskettes. The publications are available for public use in more than 1,350 Federal and 125 Census Depository Libraries. Publications are also distributed to more than 1,200 state and local organizations for public use through our State Data Center Program. The U.S. Government Printing Office sells all Census Bureau reports at nominal prices. Microfiche products are sold by the Census Bureau and the Government Printing Office and the flexible diskettes are sold by the Census Bureau.

The public use computer tapes containing statistics from our censuses and surveys are sold by the Census Bureau to anyone who desires to purchase them and are provided free to the states participating in the State Data Center Program. The states provide the public with printouts and other services based on the tapes. Commercial firms frequently buy our tapes and repackage them for their customers.

From the foregoing, you can see that the Census Bureau publishes both a wide variety and great volume of products to meet the data needs of users in all sectors of our society. The implementation of CENDATA, the subject of my remarks, represented a fine tuning to address two very specific user needs--one long standing and the other relatively new. First, there has been the problem ever since the first Federal statistics were published of getting quick access to data soon after they were released to the public. For example, many news organizations as well as end users want such key economic indicators as retail sales, manufacturers' shipments, inventories and orders, and housing starts as soon as they are released by the Census Bureau. Press releases and information on newly released products are also wanted at the earliest possible moment. Access to information soon after it is released rather than waiting for delivery through the mail or reading about it weeks or months later in a newsletter is critical to many users.

The other need that CENDATA was designed to meet was the desire of many users to take advantage of the significant advances in recent years in end user communications with computers. The increased availability of opportunities for users to interact online with computerized data bases and the explosion of terminals, word processors, and microcomputers created a natural demand for access to Census Bureau information using these capabilities. While several commercial vendors offered dial-up value added type services based on selected Census Bureau statistics, no one provided timely electronic access to press releases, new product information, and statistics in a simple information distribution system. To meet these two user needs--quick access to time sensitive information and electronic access to Census Bureau information--Census Bureau staff conceptualized a program in 1983 which was to become CENDATA.

Several principles were identified to guide the development of an electronic dissemination system:

- --Avoid any schemes that would permit public access to the Census Bureau's computers (this was to prevent both public perception problems and the remote possibility of unauthorized access to confidential data);
- --Avoid competition with the private sector;
- --Reduce costs to the Government by not having to develop or purchase software, lease computer time, and the like; and
- --Develop a system that would be simple enough for a wide variety of users to access.

The decision was made to determine whether a public/private venture to develop an electronic data dissemination system following these principles was possible. In November 1983 a "Request for Information" was published in the Commerce Business Daily soliciting expressions of interest by firms in providing Census Bureau data and product information online in a full text format at no cost to the Census Bureau. Of the nineteen firms requesting additional information, two accepted the Bureau's guidelines and now offer CENDATA to the public as part of their regular services. CENDATA went on the air in August 1984.

CENDATA is the Census Bureau's name for a data base consisting of press releases, new product information, and statistics from many of the Bureau's censuses and surveys. Under the terms of the agreements with the vendors, CENDATA must be offered to the public in a full-text, menu driven system. "Full text" means that the press releases, new product descriptions, and statistical tables are stored, retrieved, and displayed in a page-like format. "Menu driven" means that the user selects the press releases and so forth for display from lists of titles shown on the screen. One of the vendors also offers a key word search capability.

The Census Bureau determines what is to be included in CENDATA and when information is to be deleted. We update CENDATA directly on a daily basis from a Census Bureau microcomputer over the telephone lines to the vendors' computers. The Census Bureau has free access to CENDATA on the vendors' computers and is not charged for updating nor data storage. Data are transmitted from the Census Bureau in a Bureau determined format which does not require customizing for individual vendors. CENDATA is accessible to all customers of the two vendors. Users can print or download (copy) to disks all or parts of CENDATA.

As data bases go, CENDATA is rather small. It's total size is about 3 million characters which takes about one percent of a standard disk drive on a mainframe computer. For comparison, all of the statistics available from the Census Bureau would add to hundreds of billions of characters. CENDATA includes Census Bureau press releases, descriptions of new products, and selected data from current surveys in the areas of agriculture, business, construction, housing, foreign trade, governments, manufacturing, and population. Most of the data presented from these surveys are highlights from the published reports. In addition the data base includes state profiles and rankings utilizing data from the Statistical Abstract, selected statistics on countries around the world, county population estimates, and short descriptions of the Census Bureau's censuses and surveys.

While we do not have statistics on the users of CENDATA, through personal and written contact we know that public, academic, and corporate librarians, state data centers, trade associations, banks, market researchers, other Federal agencies, and investment companies are using this data source. We promote the availability of CENDATA in our newsletters and statistical reports and at conference exhibits and professional association meetings. The vendors promote it in their literature and at their user meetings.

CENDATA represents just one of the many ways that the Census Bureau packages and delivers its information to meet the needs of a wide variety of data users. The use of electronic dissemination does not replace any of the previous ways used to disseminate Census Bureau statistics nor are their any plans to eliminate any statistics published in paper format that are also available electronically. CENDATA is a 1980's refinement of our efforts to make Census Bureau statistics more accessible and useful.

This concludes my testimony. I will be glad to answer any questions you may have.

CENDATA Hearing--Questions and Answers
June 26, 1985

1. What are the names of the two firms that offer CENDATA to the public?

   DIALOG Information Services of Palo Alto, CA; and The Glimpse Corporation of Alexandria, VA.

2. How did you choose the two commercial vendors now offering CENDATA?

   Of the 19 companies that responded to the "Request for Information" published in the Commerce Business Daily in November 1983, they are the only ones that agreed to offer CENDATA on their systems according to our terms.

3. What are the requirements that a firm must meet to participate in the CENDATA program?

   The basic requirements are:

   1. The vendor shall not charge the Census Bureau for accessing the system for data transmission, storage, verification, or deletion;

   2. The CENDATA data base shall not be combined by the vendor with other Census Bureau data or any other data offered by the vendor;

   3. Users of CENDATA shall not be required to purchase any additional data or service in order to access CENDATA;

   4. CENDATA shall be developed in a "full text" format using a menu driven approach;

   5. The vendor shall provide the Census Bureau with free connect time for demonstration purposes;

   6. The vendor shall utilize a national communications network that will allow users, via a local dial-up, to access CENDATA.

4. Have you had any complaints from other vendors?

   No, none at all.

5. How does the Census Bureau support activities related to the implementation and maintenance of CENDATA?

   Funds from the various censuses and surveys designed for publication and dissemination are used to fund the Census Bureau's internal CENDATA operations. No funds are provided to the vendors.

6. How much does it cost the Census Bureau to support CENDATA activities?

   Approximately $75,000 a year.

7. What legal authority does CENDATA operate under?

Title 13 of the United States Code directs the Census Bureau to collect and publish statistics on a variety of topics. We interpret "publish" in the broadest sense, including the use of electronic dissemination.

8. If another vendor asked the Census Bureau to provide a copy of CENDATA, would you make it available to them?

Yes, under the same conditions that we provide it to the two vendors now offering CENDATA to the public.

9. How much do the two vendors charge for CENDATA?

One charges $28 an hour and the other $36 an hour. These charges are at the low end of current commercial dial-up information costs. Some data bases cost as much as $500 an hour to access.

10. Don't you think that these rates are too high to obtain Government data?

No. These are, in fact, at the low end of the range of commercial charges for this type of service. It is our position that we will let the market place determine the rates. Additionally, there is a tendency to compare the price of electronic access to data with the price of a report published by the Government Printing Office. Except in highly subsidized situations, these costs will seldom ever be similar. Further, there are hidden costs in purchasing a book such as traveling to the book store or waiting for a mail order delivery. These costs are not usually factored in the comparison.

11. Aren't people without terminals or who can't pay the high cost of dial-up access denied access to the benefits of using CENDATA?

The simple answer is yes. However, a large number of libraries have contracts with one of the vendors that offers CENDATA and provide public access to their services. Also, the information in CENDATA is also available in paper format through the Government Printing Office, libraries and other traditional sources.

12. How can you justify giving CENDATA to commercial firms?

In turn for providing the data to the vendors, they do not charge the Census Bureau for the use of their computers to update and store the data plus they each provide the Census Bureau 100 hours of free access to the data monthly. Additionally, it is our opinion that through this extension to our data dissemination program we are able to meet the needs for timely and electronic access to selected Census Bureau information at a very small cost to the Government.

Mr. Kleczka. Fine. Thank you, Mr. Benton.

Mr. Benton, you indicated that there are two vendors which work with the Census Bureau on this CENDATA system. What type of fee arrangement or contract does the Census Bureau have with these two vendors?

Mr. Benton. Basically, there are six factors, or six elements in the contract. One, the CENDATA data base shall not be combined by the vendor with other Census Bureau data, or any other data offered by the vendor; two, users of CENDATA shall not be required to purchase any additional data service in order to access CENDATA; three, CENDATA shall be developed in a full text format using a menu driven approach; four, the vendor shall provide the Census Bureau with free connect time for demonstration purposes; five, the vendor shall utilize a national communications network; and six, the vendor shall not charge the Census Bureau for accessing the system, data transmission, storage, verification, or deletion of Census data from the data base.

Mr. Kleczka. So there's no dollar amount on this type of activity? It's just a use of services type of thing?

Mr. Benton. Yes, sir. Precisely.

Mr. Kleczka. OK. Unlike Agriculture, which will be receiving a 10-percent return from the vendor? Is that how to put it?

Mr. Benton. That's one way, sir.

Mr. Kleczka. In other words, it's an appropriate 10-percent fee. Why doesn't the FDA have a similar type of an arrangement?

Mr. Meyer. You mean where we receive money back?

Mr. Kleczka. Or services. It's my belief that you're paying for all your services, and getting nothing for free?

Mr. Meyer. Well, we are paying $3,000 a year to put our information on the electronic bulletin board. Further, we are doing that in what we still think is a period of evaluation. We thought that was a pretty modest amount, Mr. Chairman. What we have also done is persuade our contractor to lower his fee to subscribers. They pay only $25 a month now to obtain that information.

We believe we have a responsibility to communicate the information on the bulletin board and we believe this is more efficient than many other approaches. Over the long term, we hope to replace some of the hard data requests that we now receive in the form of correspondence by having people access available information. As consumer groups and others become increasingly aware that we have been able to reduce our costs, perhaps to zero, and then we may very well receive something back. It hasn't—but this is only the third year.

Mr. Kleczka. You're saying until the costs start increasing over and above the $3,000, you're not looking at a user fee or——

Mr. Meyer. I don't think our costs will increase over the $3,000; I think they'll go down. I think when the organization that we're contracting with, Dialcom, receives enough subscribers where that business becomes profitable for them, we will expect further reductions in our costs and we will seek them.

Mr. Kleczka. Let me ask, do you think it's appropriate for an agency to barter its information in exchange for free services?

Mr. Meyer. Well, I don't think that's really the way we look at what we're doing. We are willing to provide this information to any organization. The contractor that we're dealing with has a very effective bulletin board at the present time, and we're using that contractor to transmit electronic mail. So I guess I don't really believe we are bartering our services. We would provide these same services to any other organization that came in and asked us.

Mr. KLECZKA. OK. Could Mr. Haney and Mr. Benton also respond to that question.

Mr. HANEY. Mr. Chairman, I'm not sure that I fully understand the use of the word "barter" per se, but we have the obligation in the Department of Agriculture, under our enabling legislation, to gather agricultural information and make it available. That's one of our missions. We receive appropriated dollars to carry out our mission.

However, under the principle of a user fee, the policy which we adopted some years ago, to help defray the costs of duplicating information that we were giving to people, we don't look at that as barter. We look at that as an opportunity to share the cost to those who have a need for the information. We're dealing with an open-ended situation and, particularly as we went into the electronic situation and electronic transmission, it's open ended. And if we, in fact, do not have some form of a user fee concept, we could incur rather large costs against appropriated dollars, for disseminating information to people that may or may not have the most legitimate use for it.

So our approach was to share the costs of making it available in a unique special way in the electronic transmission. Electronic format is unique and special at this stage of the game.

Mr. KLECZKA. How much do you anticipate receiving through this 10-percent mechanism?

Mr. HANEY. At this point, we don't really know. We don't have a good feel for what the total use will be.

Mr. KLECZKA. Can you make a guesstimate at this point? You must have some idea of possible usage.

Mr. HANEY. I wish we did. Of course, that's one of the reasons that we built into our contract the requirement to gather statistics on the use of that information, so that that will be fed back to us and we will, over time, have available to us, some good statistics upon which we can estimate future use of information.

Mr. KLECZKA. But in agreeing with the contractor on this 10-percent system, you'd think either the Agriculture Department or the contractor would have some idea what this is going to cost; and the contractor, definitely, how much he is going to gross on this type of an arrangement.

Mr. HANEY. No, we don't have very good information on that; we anticipate the cost is going to be reasonable to us. Our up-front costs, in terms of special software, was $250,000. We would expect that——

Mr. KLECZKA. What was that figure?

Mr. HANEY. $250,000.

Mr. KLECZKA. You anticipate recouping that cost with interest, sir?

Mr. HANEY. We anticipate recouping that cost over the life of the contract, but we don't know whether we'll get it in the first year, or the second year, or the third year.

Mr. **Kleczka**. It's a 3-year contract. When these funds are received in the agency, will they be used to augment the appropriation, or will they be turned over to the Treasury as a special receipt?

Mr. **Haney**. The way this is written into the contract, the 10 percent refund—and that's not really the right word—what in fact, will really happen is, that for the costs that we incur in putting information into the system, we will receive a credit in an amount of 10 percent of their revenue. This will be credited against the cost that we are incurring.

Mr. **Kleczka**. But those costs were originally paid for by taxpayers' funds, which Congress gives you a 3-year appropriation?

Mr. **Haney**. The $250,000, yes. And the costs that——

Mr. **Kleczka**. Are you going to return that back to the Treasury, then? You're using two sources of funding. One's taxpayer, and now you're using a receipt form from the contractor.

Mr. **Haney**. You're getting a little beyond my field of expertise in the finance area, but it's my understanding that the money will be, the refund, in essence, shows up as a credit against any bill that the company sends us for the services they provide to us.

So, if we incur $1,000 a month of expense, we may get $100 credit, based on the revenue they make, so we pay them $900 instead of $1,000.

Mr. **Kleczka**. OK. We'll have to check further into that.

Mr. Benton?

Mr. **Benton**. Mr. Chairman, we don't consider the free connect time to be a free service that we receive from the vendors, the two vendors that we presently have, and hopefully, additional vendors in the near future. We demonstrate within the Bureau of the Census, at association meetings through various cities throughout the country, and at various professional group meetings, the benefits of CENDATA.

In turn, while we do that, we advertise the two vendors that provide, or have the capability of providing this service to the public. Hopefully, this results in increased business for the vendors. So, we do not consider it to be a free service.

Mr. **Kleczka**. Do you find yourself in competition with—your dissemination services—with any other contractor or vendor?

Mr. **Benton**. No, sir. At this time, we do not. And, as I mentioned a few minutes ago, with the six elements that we have as requirements, we hope to greatly increase the number of vendors. The more vendors there are, the greater our success. We feel that a distinct part of our mission is the dissemination of data that we collect and process. So we are not aware of any competitive problems.

Mr. **Kleczka**. Is your agency looking into a possible arrangement like the Department of Agriculture has to get a fee or a commission back from the vendors?

Mr. **Benton**. No, sir. We've not given any consideration to that at this time.

Mr. **Kleczka**. Do you not think that would be a wise idea in an effort to reduce taxpayer costs for running the agency? You're not making any money on this thing.

Mr. Benton. OK. Our costs are $75,000 a year, Mr. Chairman, and, again, we feel that the electronic dissemination of data is simply an extension of our responsibility to publish data.

Mr. Kleczka. But if it's used for commercial purposes, do you not think at that point you should be reimbursed for some of the taxpayer costs?

Mr. Benton. We have not discussed that at this time, sir. We only came on-line in August of 1984, and perhaps that's something that would be discussed at a later date.

But we also have entered into written agreements with the two vendors that we have at this time, that do not include any provision.

Mr. Kleczka. What is the term of those agreements?

Mr. Benton. I don't know. Jim, do you know the term of the agreements?

Mr. Curry. The agreements do not have an end point. There's no terminal point. Either side can cancel the agreement with 60 days' notice, so it will run perpetually.

Mr. Kleczka. Perpetuity. OK.

Before you put on a new product for dissemination—and this is to all three gentlemen—do you do any type of a market research to see whether or not there is interest out in the public for whatever you're disseminating?

Mr. Meyer.

Mr. Meyer. We did not do a market research analysis, but we don't have much question about the demand. We have as many as 90,000 inquiries a year of our agency. Anything we can do, to lower that number by getting information out more efficiently, is a big improvement for us.

Mr. Kleczka. Mr. Haney.

Mr. Haney. We entered into this effort based on the strength of our historical experience in providing information to the agricultural and rural community. We were precipitated into it by a demand that was there. We have been trying to respond to that demand in the most cost-effective way. We did not enter into any market survey as such in terms of agricultural data.

Whether we will in the future is something we would have to consider. I would have to go back to the program agencies, and get a more specific answer on it. I could provide more background on that answer for you, if you'd wish.

Mr. Kleczka. If you would, we'd appreciate that.

Mr. Benton. Mr. Chairman, we did not conduct a formal market survey. We have several thousand data users and there was an extreme amount of interest expressed in having the capability for electronic access to the data for the timeliness aspect of it. As we enter into these agreements with the vendors, as I've mentioned, we assume that the marketplace will determine the amount of interest. If the vendors succeed and increase, obviously it was a success. But we have no investment in a market survey at this point, or a minimal investment.

Mr. Kleczka. OK. Thank you.

Let me ask all you gentlemen whether or not you are aware of any central policy guidance in the executive branch on electronic dissemination systems? Is there someone you turn to in the administration for questions on the areas that you're dealing with?

Mr. Benton.

Mr. **Benton**. I'm not aware of any guidance we've received, other than the public responsibility we all carry to do things that make sense in the most efficient way and with the lowest cost. No specific guidance on electronics.

Mr. **Kleczka**. There's no central authority that you are aware of in the Federal Government that you can turn to for problem solving or questions on where to go or——

Mr. **Meyer**. I don't think so.

Mr. **Kleczka**. Done by agency, within each agency?

Mr. **Meyer**. I'm not aware of any. We proceed pretty carefully. We try to do so competitively. We have, within our own organization, some very very sophisticated talent in the telecommunications field. The person in charge of our telecommunications was recently requested by the White House to help them with some problems they had, so we feel fairly confident about our own internal strength in this area, sir.

Mr. **Haney**. Mr. Chairman, when we entered into this project at the Department of Agriculture, we had a lot of questions relative to policy on the dissemination of information and some of it concerning the questions you asked about the rebate or the refund. We did not find a lot of guidance. However, we have had some consultation with staff people at OMB. There is some reference to this general subject in the recent issuance of new—and I don't have the exact quotation—but there is, out for review from OMB, a new OMB circular on information management, information resources management.

There is some reference to this subject there. And we have had continuing dialog with those folk, but I think it's an area in which we would have welcomed a little more policy guidance at the time we were wrestling with some of the questions.

We think we've taken the right direction; we think we're on sound ground; we think we're providing a service to the agricultural community at large, and to the taxpayer and we think it's cost effective. But there's still, I'm sure, as we get more experience, there's still going to be questions that we're going to continue to have. I think all of us are sort of breaking new ground in a sense.

Mr. **Benton**. Other than the section on electronic data collection and dissemination in this draft OMB circular that my colleague just mentioned, I'm not aware of any central policy at this time. And, fortunately, as they have said, within our organization we have the technical expertise that we could accomplish this.

Mr. **Kleczka**. Fine. Thank you.

Mr. Chairman.

Mr. **English**. No questions. Done a great job.

Mr. **Kleczka**. Fine. Well, let me thank this panel for appearing this afternoon, and sharing their expertise with the committee. Thank you.

I should point out that Mr. English will be conducting further hearings on this general area, that of electronic collection and dissemination of information, but now, that is all for today.

And let me, at this point, adjourn the committee hearing.

[Whereupon, at 3:53 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

ELECTRONIC COLLECTION AND DISSEMINATION OF INFORMATION BY FEDERAL AGENCIES

FRIDAY, OCTOBER 18, 1985

House of Representatives,
Government Information, Justice,
and Agriculture Subcommittee
of the Committee on Government Operations,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 2247, Rayburn House Office Building, Hon. Glenn English (chairman of the subcommittee) presiding.

Present: Representative Glenn English.

Also present: Robert M. Gellman, counsel; Euphon Metzger, clerk; and Gregory Kilgore, minority professional staff, Committee on Government Operations.

Mr. English. The hearing will come to order.

This is the third in a series of hearings on electronic collection and dissemination of information by Federal agencies. At previous hearings, we considered the information automation activities and plans of the Securities and Exchange Commission, Federal Maritime Commission, Census Bureau, Food and Drug Administration, and Department of Agriculture.

Today, our focus will be on the National Library of Medicine's Medlars system and on the trademark automation activities of the Patent and Trademark Office. Both of these agencies maintain large files of public information, and both have made decisions about how to make those files available in electronic format. We hope to review those decisions and to compare and contrast the alternative approaches.

There are, of course, some important differences. The National Library of Medicine was a pioneer in the sharing of large electronic data bases, and Medlars has been available interactively for many years.

The system appears to be working well, although there were some recent controversies over pricing policies. We will take a look at the different ways in which the information in Medlars is offered to public users.

The Patent and Trademark Office is just now beginning to automate its data base of both patent and trademark records. We will be concentrating here on the trademark side. The exchange agreements used to convert paper trademark records into electronic format have generated considerable controversy and opposition.

I find these agreements to be especially troublesome because of the explicit restrictions they impose on access to public information. NLM also restricts redisclosure of some of its data, but does so in a different way.

The user fees for the trademark automation system are another point of controversy. We will be able to see how PTO's user fees compare with the charges for the Medlars system.

As was the case at earlier hearings, we do not expect to resolve any issues here. I note in passing that legislation restricting the use of both exchange agreements and user fees by PTO has already been approved by the House and is pending in the Senate. This legislation also has the beneficial effect of ensuring greater public and congressional oversight of the automation process at PTO.

Our goal at these hearings is to identify and discuss the policy issues that arise as Government records are brought into the electronic information age. We hope to learn from the successes and failures of agencies that have established electronic systems. Ultimately, we hope to be able to offer some general guidance through an oversight report.

I ask unanimous consent that a statement by Mr. Kindness be entered into the record at this point.

[The opening statement of Mr. Kindness follows:]

CONGRESSMAN THOMAS N. KINDNESS OCTOBER 18,1985
8TH DISTRICT, OHIO

MR. CHAIRMAN, I AM PLEASED THAT WE ARE CONTINUING OUR SCRUTINY OF FEDERAL GOVERNMENT ELECTRONIC COLLECTION AND DISSEMINATION OF INFORMATION. IN OUR FIRST TWO SESSIONS, WE EXAMINED A NUMBER OF ISSUES WHICH I BELIEVE ARE COMMON TO ANY FEDERAL AGENCY SEEKING TO CREATE OR AUGMENT ITS ABILITY TO ELECTRONICALLY COLLECT AND DISSEMINATE INFORMATION.

WE HAVE HEARD FROM A NUMBER OF DIFFERENT AGENCIES WITH VASTLY DIFFERING MISSIONS. I BELIEVE THAT BY LOOKING AT THESE ORGANIZATIONS, WE WILL BE BETTER ABLE TO UNDERSTAND AND PROVIDE GUIDANCE IN AN AREA WHICH AFFECTS US ALL.

IT HAS BECOME QUITE CLEAR THAT VIRTUALLY ALL FEDERAL AGENCIES HAVE IN PLACE OR ARE CONSIDERING ENHANCING THEIR AUTOMATED DATA PROCESSING CAPABILITIES. IT IS ALSO CLEAR THAT IN ORDER TO KEEP PACE IN TODAY'S ELECTRONIC ENVIRONMENT, IT IS ALMOST MANDATORY TO HAVE THIS TYPE OF CAPABILITY TO SOME EXTENT.

BUT AGAIN, I WOULD LIKE TO CAUTION THESE AGENCIES THAT THERE MUST BE A DEMONSTRABLE NEED FOR THESE SYSTEMS BEFORE THEY ARE IMPLEMENTED. IN ADDITION, STUDIED CONSIDERATION MUST BE GIVEN TO THE EFFECTS OF THESE SYSTEMS. THE AGENCY SHOULD ASK FOUR BASIC QUESTIONS:

1. WHAT IS CURRENTLY AVAILABLE IN THE PRIVATE SECTOR WHICH MAY ALREADY BE PERFORMING THE PLANNED FUNCTION?

2. WHAT CONTROLS WILL BE NECESSARY TO INSURE THE PUBLIC'S CONTINUED ACCESS TO GOVERNMENT INFORMATION?

3. WILL THERE BE AN ADVERSE AFFECT ON EXISTING CONTRACTORS?

4. WILL THE PRESENT SYSTEM BE SUFFICIENT IF SIMPLY AUGMENTED TO A DEGREE INSTEAD OF REPLACED?

THERE ARE, OF COURSE, A NUMBER OF OTHER ISSUES WHICH SHOULD BE ADDRESSED IN IMPLEMENTING THESE SYSTEMS; BUT THESE BASIC QUESTIONS SHOULD BE ANSWERED LONG BEFORE AN AGENCY ACTUALLY BEGINS ITS ACQUISITION OF ADP HARDWARE OR SERVICES.

MR. CHAIRMAN, I AGAIN COMMEND YOU FOR CONDUCTING THESE HEARINGS. I JOIN YOU IN WELCOMING TODAY'S WITNESSES, AND I LOOK FORWARD TO HEARING THEIR VIEWS.

Mr. ENGLISH. We will begin today with our first witness, Dr. Donald A.B. Lindberg, who is Director of the National Library of Medicine. Dr. Lindberg, do you have some people who are accompanying you?

STATEMENT OF DR. DONALD A.B. LINDBERG, DIRECTOR, NATIONAL LIBRARY OF MEDICINE, ACCOMPANIED BY KENT SMITH, DEPUTY DIRECTOR, AND ROBERT LANMAN, GENERAL COUNSEL, NATIONAL INSTITUTES OF HEALTH

Dr. LINDBERG. Yes, sir, on my left, Congressman, is Mr. Kent Smith, a Deputy Director, National Library of Medicine; on my right is Mr. Robert Lanman, who is NIH General Counsel.

Mr. ENGLISH. Very good. Be happy to receive your testimony. If you would like to submit your written testimony for the record, we would be happy to receive that and let you summarize your testimony, if you so wish.

Dr. LINDBERG. Very well, I would be happy to provide the written testimony. I think I have done so ahead of time.

I am pleased to be here today to discuss Medlars, the National Library of Medicine's computer-based Medical Literature Analysis and Retrieval System. To place Medlars in perspective, I would like first to mention briefly NLM itself and its mission.

The NLM was established by Congress in order to assist the advancement of medical and related science, and to aid dissemination and exchange of scientific and other information important to the progress of medicine and to the public health.

Since its early beginnings, NLM has emerged as the world's largest research library in a single scientific and professional field, and now stands as a dynamic national resource of biomedical information.

The library collects materials exhaustively in all major areas of the health sciences and to a lesser degree in such areas as chemistry, physics, botany, and zoology. The collections today contain over 3 million items: Books, journals, technical reports, manuscripts, microfilms, and pictorial materials.

This extraordinary amount of biomedical literature at hand, plus that which is continually generated from today's research would become, for all practical purposes, lost to the researcher, medical educator, or the practicing physician attempting to use it if it were not carefully cataloged, systematically indexed, and easily accessed.

This is NLM's role in support of the public health. It is a role that provides a vital link in the Federal health research and development process by assuring that the results of research are accessible to the biomedical community to be used to improve direct patient care, to build a knowledge base for future research and development, and to educate health professionals.

Medlars is not new. Historically, it was a pioneering effort to use the emerging computer technology of the early 1960's for the production of bibliographic publication and for conducting individualized searches of the literature for health professionals.

Medlars continues to be used for preparing and photocomposing bibliographic publications. Index Medicus, the monthly subject/author guide to articles in nearly 3,000 journals, is the most well-known of these, but dozens of other specialized medical bibliographies are produced as well.

NLM has a legal mandate to acquire, organize, and disseminate the world's biomedical literature. In view of this mission and NLM's desire to assure equal access to the biomedical community, it provides access to the existing data base through a national online biomedical communications network.

Today, in the United States, some 3,000 institutions are members of the Medlars on-line network, through which some 3 million searched were performed in 1985. Through commercial communication networks, Medlars search services are available online to researchers at biomedical libraries and other institutions throughout the country as well as to the practicing physician searching for the latest in treatment techniques.

In addition to direct online access, NLM shares its computerized resources by making the computer tape data bases available to commercial information vendors, who frequently repackage the data and add new search capabilities and features.

NLM also leases the tapes to governmentally designated institutions in a number of foreign countries.

As a result of NLM's efforts and its shared resources, persons studying or working in the health sciences have rapid and comprehensive access to the professional literature.

The computer's ability to search rapidly through a large number of references to see which meet the specified criteria results in an individualized bibliography that otherwise would not be possible. You find exactly the publication you want relating to a particular patient or particular question.

But then, to assure delivery of appropriate documents once they are identified by the searcher using Medlars, NLM coordinates a nationwide library system. The system involves seven regional libraries supported by NLM, along with approximately 120 resource libraries, and some 4,700 other health science libraries throughout the Nation.

You directed us to remark on the cost and charges.

Medlars services are not provided without charge, and no charge has been imposed without study both from within and from outside NLM. The 1956 legislation established the National Library of Medicine within the Public Health Service and also established the NLM Board of Regents.

In addition to top Federal health officials, this Board consists of leaders in American science, medicine, and medical librarianship selected from the public and appointed by the Secretary.

The legislation specifies that these appointed members are to be selected from among leaders in the various fields of the fundamental sciences, medicine, dentistry, public health, hospital administration, pharmacology, scientific and medical library work, or in public affairs.

The Board of Regents has advised the Secretary that user charges are appropriate for Medlars services, whether provided online by NLM, through leasing arrangements with commercial vendors, or through international bilateral arangements.

NLM's charges for domestic on-line services are priced to recover all costs associated with dissemination, the true costs to NLM of providing access to Medlars. Foreign institutions that are provided access to Medlars, on the other hand, are charged an appropriate portion of the NLM data base creation cost, as well as the cost to access the system.

Medlars generation costs are supported by congressional appropriation and therefore subsidized by the U.S. taxpayer. It was the Board of Regents' opinion that since foreign users are not U.S. taxpayers, it is reasonable for them to contribute their proportional share to the cost of data base creation.

Charges assessed for direct on-line usage and for the leasing of tapes by domestic vendors and foreign institutions are billed by the Department of Commerce's National Technical Information Service. Any funds in excess of the expenses associated with providing the services are returned to the U.S. Treasury.

There has been much discussion in recent years about the role of the Federal Government in the provision of information services. NLM has long been a leader in the provision of health information. In fact, 1986 will mark NLM's sesquicentennial year.

NLM wishes to encourage cooperation with private information producers and vendors now entering the health arena, and believes that the private sector can contribute important value-added services that complement those of NLM.

Through cooperative efforts with the commercial sector, NLM is exploring new ways to make its data bases generally available, including distribution of data base subsets on video discs that will provide new opportunities for private sector firms to market new value-added services.

NLM is establishing such collaborative programs with commercial information vendors in order to create new and innovative products and services that will assist in the effective dissemination of biomedical information, NLM's primary mission.

That concludes my statement. I will be happy to answer any questions you may have.

Mr. ENGLISH. Thank you very much, Dr. Lindberg, thank you. I appreciate your testimony.

Let me say at the outset that I think that the work that you do at the Library of Medicine is very important; certainly Medlars is a valuable resource for the medical and research communities. I do have some questions about the structure of Medlars, but I certainly don't want you to interpret my questions as being any kind of general criticism of the role of NLM.

In the area of fees, you said that the charges for on-line services are priced to recover all costs. Exactly which costs are recovered and which costs are paid out of your budget?

Dr. LINDBERG. Yes, sir; broadly, the cost of creating the data base is paid out of the budget, and the costs of calling in and accessing and asking questions against it are paid for by user fees.

The data base is created as the Library fulfills its primary mission. NLM buys books and journals and then organizes and describes them, or as we say acquires, catalogs, and indexes them by basically that description.

NLM creates a computer data base that lets one know what is in the collection, which includes 3 million items. Of course, it is quite a task to search through those and would be almost impossible to do so manually. The costs of building the data base, a primary mission of the institution, are paid for by appropriated funds.

In the old days, that process resulted only in the production of a a printed book called "Index Medicus."

About 60 million pages a year of this book are still printed and sold and demanded. However, since 1964 when the computer based system was first used to produce "Index Medicus," the world has become more complex. Literature is more voluminous, users are more sophisticated, have more sophisticated questions, and the computer technology is also much better.

So in many cases, it is more efficient and efficacious to do a search using a computer system rather than thumbing through the pages of the Index Medicus volumes.

Mr. **English**. Who pays the capital costs for buying the computer hardware?

Dr. **Lindberg**. That is paid for by appropriations. I should say that the same computer that is used to build the data base is also used to process these inquiries against it. It happens that about 80 to 85 percent of the use of the computer is to run the library, to build the data base, to log the books in and out, and to index them. About 15 to 20 percent, at most, of the capacity is used to process inquiries against the data base.

So, we partial out those costs and expenses.

Mr. **English**. Are the charges for tapes based on the cost of making a copy of the tape?

Dr. **Lindberg**. That is part of the cost, but there is a good bit more. For example, in running on-line service, we also include the telephone line charges, the network charges that are paid to three commercial telephone systems that are used, Telenet, Timenet, and Uninet. In addition there is a substantial cost to operate the system, to have people maintain the equipment, computer operators to create and update training manuals for users in these 4,000 hospitals and staff to handle technical inquiries from users. All of those costs, as well as the costs of billing and the usual recordkeeping are part of the cost of access. If we only printed Index Medicus, sent it to the GPO and stopped, we wouldn't have any of those costs. So those incremental or marginal costs are collected in the user fee.

Mr. **English**. If somebody wants to lease a tape, what are the charges involved in that?

Dr. **Lindberg**. There would be two circumstances. If it is an American firm or individual, who wishes to lease the tape, then we have an arrangement such that they will pay a minimum charge of $15,000 a year, which is offset by actual usage. The algorithm used to determine this offset, factors in hourly connect charges, and the number of citations retrieved. But in essence, the internal use charges average $15 in off-hours, and $22 in prime time.

In the second case, in the case of an overseas user, the arrangement is the same except that there is in essence a surcharge, because, as I said, they haven't paid U.S. taxes to support the data base creation.

So, if we looked only at the question of tape use charges, the domestic would be $3 and $4, the overseas would be $6 and $7. In both cases, there is a slightly different charge for off-line citations.

So, there is a differential between domestic and foreign.

Mr. **English**. Is all that based strictly on making a copy of the tape?

Dr. **Lindberg**. No, it is based on making and mailing the copy of the tape and also the overhead to run that system.

Mr. **English**. Well, let's assume that half the people who want a copy of the tape decide that they don't want it next year. Does that mean that there would be an increase, a doubling in the cost of the tapes for the other half of the people who want copies?

Dr. **Lindberg**. If that were the case, inevitably we would have to increase the charges.

Mr. **English**. Is that automatically what you do, though?

Dr. **Lindberg**. No, as things have fallen out, we have recalculated it periodically. Over the years usage has increased, not decreased. More people continue to want these tapes.

I should, if you will permit me, add that we view it as a reasonable usage fee. In the case of American vendors, they of course are free to make whatever charge to users that they wish, and these actually vary from $27 an hour up to $36 an hour, plus communication costs, so that the $3 or $4 charged by NLM are relatively small portions, perhaps as little as 10 percent.

Mr. **English**. I believe over the years, though, the charge has varied, at times you had a flat rate charge, and other times there was a usage charge. What prompted the difference, why the change?

Dr. **Lindberg**. Well, essentially, we changed with the changing times. It is common practice, at least in the commercial world to make usage charges rather than flat fees.

Probably our major reason for changing is that it is a fairer way to charge users. The flat charge really arose in the days when the only communication device was a teletype, a rather slow one.

Now that more effective and more expensive and more efficient terminals are available, the usage fee is more equitable. If you only paid for the flat connect time, then the person with the expensive terminal could perhaps do 10 or 20 times the amount of retrieval as the person with the slow terminal for the same fee.

Unfortunately, there are a lot of slow terminals in medical libraries. We think that is unfair. We really want to recover the cost in proportion to the amount of use the person makes.

So, I think the simple answer is that we changed with the changing times.

Mr. **English**. Did I understand you to say that you are charging based on the amount of use?

Dr. **Lindberg**. Yes, sir.

Mr. **English**. Then it is not the amount of cost to you, it is the amount of use they can make of it?

Dr. **Lindberg**. I think the two are directly related. The use refers to how many questions asked of the system and how complex were those questions, and that is directly related to our computer use. A usage fee seemed to be the fairest way to approach the problem, rather than just a simple subscription fee.

It has a lot of advantages. One is the obvious one: it would discourage trivial use. Certainly it is a rare and scarce commodity. We could not afford to receive an unlimited number of inquiries on a casual basis.

But, it seemed fairer. It reflects the full use, the number and complexity of the questions, and how many comparisons and actions the computer is made to go through.

Mr. **English.** Since the purchaser of the tapes uses his own computer to conduct the search, why should he pay for the connect time?

Dr. **Lindberg.** If you speak simply of the tape, then it is a matter of providing for recovery of costs for access across all of NLM's products. For tapes we do factor in a charge for use, but we don't attempt to monitor it in a sort of micro way. Commercial vendors don't always have the same software as we, so we take a broad measure of usage, which is the number of hours connected, plus the number of citations printed off-line.

We take a broad measure of those, as broad as we can make practical.

Mr. **English.** Is that specifically related to your cost?

Dr. **Lindberg.** Well, I think our view is that it is related to the overall cost of the operation across all of the databases.

Mr. **English.** You can't tie it back specifically to the cost?

Dr. **Lindberg.** It would be hard to tie it to a particular data base, but not across all NLM products.

It is our intent that we should recover the costs to the Government insofar as we are able for a valuable product, yet at the same time, try to make it very broadly available.

I mean, there are two good things that we are trying to do at the same time, I suppose that is what it comes down to.

Mr. **English.** Does the NLM have specific authority to set fees for tapes that are not based on cost?

Dr. **Lindberg.** Perhaps I should ask our counsel, Mr. Lanman, but it is my understanding that it is the duty and responsibility of the Board of Regents to establish whether any such services are charged for and then to recommend the specific charge to the Secretary. Am I correct?

Mr. **Lanman.** Yes, the specific statute, Congressman, is section 382 of the Public Health Service Act, 42 U.S.C. 276. It does not specify what the charge should consist of.

It merely provides the authority to impose a charge.

Mr. **English.** So you are saying then that you do have the authority to make cost charges, or make charges that are not based on cost?

Mr. **Lanman.** Yes, sir.

Mr. **English.** That is kind of an interesting concept, isn't it?

Mr. **Lanman.** Congressman, I would point out that the general statute, the user charge statute that applies to all of the Government, one of the factors that it specifies as far as the makeup of the charge is the value to the user of the service.

Mr. **English.** We have a question on that user fee statute, so I guess it would be a good time to get into it. The user fee statute sets out the rules for calculating fees for services except where another law prescribes a different basis. Does the NLM statute qualify as a law that prescribes a different basis for fees within the meaning of the user fee statute?

Mr. Lanman. I think it would, Congressman, yes. I cited that statute only to indicate that Congress has, in the past, recognized that the value to the user is an appropriate factor of cost.

Mr. English. So we are into a situation here that we are not charging people for information specifically based on what it costs the Government to provide that information; instead, we are going to make a judgment as to what the value of that information is, and that is what we are going to base the charge on, is that right?

Dr. Lindberg. I was suggesting that in fact what the institution has tried to do is to analyze all of the overall costs for running the services, and then to divide those up in such a way that it recovers the proper proportion of those costs which the Regents have decided are access costs for domestic users and access costs plus a proportionate data base creation for overseas users.

Now, as with a company, the usage is a little hard to predict from year to year. As you pointed out, some vendors come in and off the system and some users come in and off the system, therefore, the recovery scheme is an estimate, and it has to be readjusted from year to year. In our case, being not a profitmaking company, but rather, a Federal agency, our arrangement has been that those usage fees are collected by NTIS. The costs of the access which in large measure are for the phone lines, are paid by NTIS, or through NTIS, and if there is a balance, that is returned directly to the Treasury.

Mr. English. You do return the balance to the Treasury?

Dr. Lindberg. Yes, sir.

Mr. English. Is there any restriction whatsoever as to the fees that you can charge, given the interpretation that you have made under the law?

Dr. Lindberg. I don't think there is a legal restriction. As I said, it is our intent that the system be as generally available as possible, certainly in the United States.

So for that reason we want to restrict fees from going too high, yet we want them high enough to be certain that NLM services, are used in a professional and not trivial way.

Mr. English. Still, though, given the interpretation that you make, it pretty much puts you in the position of playing God, you decide whether or not something has a value, and you put a price upon that value, and you can determine exactly whether that person is going to find it economically feasible to use the service or not.

Dr. Lindberg. Well, as I tried to say, that isn't the way I view it. Maybe I ought to ask my colleague, Mr. Smith, if he would comment.

Mr. Smith. The 1956 NLM Act states that the Library can charge or not charge for its services. Therefore, it has that option. At one point, we did not charge.

Quite frankly, there are a lot of pressures brought to bear about charging for service. The NLM Act requires that the Board of Regents, which is the governing board of the Library, to recommend to the Secretary of the Department what the charges should be for services. The basic premise the regents have used is that NLM should be charging only for the access cost across all products, whether they be publications, on-line services, or tapes.

And so, in aggregate, we are charging only for the cost of access. We could have charged for the cost of creation, but we believe that those prices would be at such a level that they would restrict the access of the health professional to the information. So what we tried to come up with is something that was reasonable for all parties concerned.

That is really what the Board went through.

Mr. **English**. Well, then, I guess that raises the question, if you are only charging for costs how can you be making a profit?

Mr. **Smith**. We are not really making a profit. The reason that there is an excess that goes back to the Treasury is that in applying good cost accounting standards, some of the costs included in the price are currently also appropriated.

For example, the maintenance of the system, the salaries for people, and as Dr. Lindberg said, the computer equipment are paid for by the appropriation. However, portions of these are also costs included in the pricing algorithm and that percentage must go back to the Treasury.

Dr. **Lindberg**. In addition, of course, it was the intent that foreign users pay a portion of data base creation costs which had already been paid for by appropriation, so we felt it was appropriate that those fees go directly to the Treasury.

Mr. **English**. Well, it would seem to me that it is kind of hard to view it as anything other than a profit. If you are turning back money to the Treasury, if you got an excess, if you are supposed to be charging for what your costs are, and you have an excess that comes in each year, that can only be viewed as profit.

Dr. **Lindberg**. Maybe I should say it a different way. My understanding of the Board of Regents policy was that costs which had already been paid for in advance by the appropriation for the creation of these data bases, where they benefited foreign users, should be paid for. That is essentially reimbursing the Government for expenditures that were already made.

Mr. **English**. If you are going to do that as far as foreign users, if that is where you are making your profit, then basically it would appear to me that would put you in a position to reduce the cost to users who are U.S. taxpayers?

Dr. **Lindberg**. That is one possible view. Actually, this question has been discussed on previous occasions in the House appropriations and authorization committees. Namely, the question as to whether NLM should be told to retain these earnings and use them in its operation.

The NLM view has been that we ought to leave things as they are, but that perhaps we could be redirected in that fashion at any year. I think others have had a different view of this matter.

Mr. **English**. Could you provide us with a breakdown of all your costs?

Dr. **Lindberg**. Sure, be happy to.

[The information follows:]

According to our FY 1984 Medlars cost analysis, the total cost for the products and services of Medlars was $12,376,000. This includes costs for online retrieval, publication of indexes and bibliographies, and production of database tapes. NLM recovers the full cost of access across all products from its users. This cost is $6,857,000 of the $12,376,000. The remaining cost, that of data creation, amounts to

$5,519,000 and this is covered by the NLM appropriation. The only exception is with regard to foreign use and there a proportional share or creation cost is included in foreign charges.

Mr. **English**. Since the taxpayers are paying the capital costs of the Medlars data base, would you agree that the bibliographical services provided by Medlars can be considered as benefiting broadly the general public?

Dr. **Lindberg**. Well, at least in a secondary way. I suppose one would have to admit that they benefit directly those who use them.

Mr. **English**. With regard to how the fees relate to NLM's mission, does NLM's mission include making a profit through the sale of the tapes themselves? Is that an objective? You are talking about returning the money to the Treasury, is this part of the overall objective?

Dr. **Lindberg**. No, NLM's basic mission is to acquire, organize and disseminate biomedical information.

Mr. **English**. Do higher fees for the tapes enhance NLM's information gathering and dissemination function?

Dr. **Lindberg**. Were they to be higher than they are now, I would say no, they would not.

Mr. **English**. Would lower fees substantially hamper that function?

Dr. **Lindberg**. Well, it would mean that the overall costs would have to be made up in some other fashion, I suppose. I might say that there have been other outside advisers whose advice has run the spectrum from urging that tapes be given away, which we feel would be in violation of the use statute; to others who have recommended that the charge be tripled, which we feel would, while it might benefit some who are in the business, wouldn't benefit the biomedical health sciences community nor the patients.

Mr. **English**. How would that benefit anybody but NLM unless——

Dr. **Lindberg**. It wouldn't benefit us in the slightest; it would benefit any company that wishes to operate under that kind of umbrella. That is to say, it would make the general cost of such services so high one could raise commercial rates to that level.

We didn't think that it was is a good idea and didn't do it.

Mr. **English**. How do the fees affect NLM's contractual ability to acquire and catalog medical information?

Dr. **Lindberg**. Probably, the simplest single word answer would be not at all, none, nil; but, I guess I should explain one additional wrinkle: Some of these data bases are rather complex and fabricated by NLM in a different way. The Medline services we have been talking about are purely bibliographical. There are other information services, that are provided in toxicology, chemistry, environmental health, that are of a very complex nature, whose sources may come in 12 or 13 different forms, including access to some commercial data bases.

So in that case, we have to pay a fee to the copyright holders of the commercial data base in order to take portions of that to make into the composite data base, which is useful in health.

A particular example would be Chemical Abstract Services. They have copyrighted data that deal with the chemical structure of compounds in a general sense, chemical not medical.

Portions of that data base are used in the toxicology work, in medical applications. Since they are copyrighted and commercial, we have the obligation to pay for that use and to pass along to our users those charges.

So, the cost structure in that case, is not totally in our hands, it has to be at least enough to recover those costs which we are obliged to pay to the information provider.

Mr. **English**. Does NLM own a copyright on any portion of Medlars?

Dr. **Lindberg**. No, my understanding is that the Federal Government may not copyright its products in the United States. I believe it may copyright them overseas. I believe that we do hold copyrights overseas.

Mr. **English**. The NLM standard licensing agreement prohibits the duplication or resale of the tapes. Are these restrictions based on specific statutory authority?

Dr. **Lindberg**. I probably ought to ask the counsel, since that sounds like a question of law.

Mr. **Lanman**. It is based on the general authority that we have to disseminate the information. There is no specific authority that says we are to do that.

Mr. **English**. Does NLM use the licensing agreement to achieve the very thing that the Copyright Act prohibits, namely, restricting the use of government information?

Dr. **Lindberg**. Well, I would hope that is not the case, but one ought to bear in mind that much of the material we build into the Medlars data base is in some cases copyrighted by others.

Our interpretation of the new copyright law allows us to do this as a fair use. It allows a user to make a single copy as a fair use, but there are other restrictions which prohibit further than that as fair use.

So we have to obey the law like other citizens, and that particular clause in the agreement simply says that the user will obey the law and will not violate the Copyright Act.

Mr. **English**. If NLM were given the authority to copyright Medlars, would the restriction on duplication or resale be any different?

Dr. **Lindberg**. Well, I don't believe we would have the right to copyright something that somebody already has copyrighted.

Mr. **English**. If you were given that authority, would it be any different, would the effect be any different?

Dr. **Lindberg**. I don't think it would. There are other reasons for NLM wanting to have formal agreements in addition to the business of wanting our users to obey the copyright law.

We also want to be certain that the quality of the services provided are suitable, that is to say, that the integrity of the data base is maintained. That particularly shows up in the question of updates.

These tapes are sent out on a monthly basis, obviously journals are published monthly and weekly, and sometimes errors are entered into the literature and retractions and corrections are published.

We want to be absolutely certain that those tapes are updated to reflect such matters. That is also part of our agreement, one of the major reasons for the agreement.

Mr. English. I want to bring up an FOIA case that held that Medlars records were not available under the FOIA. In our view, why that case was wrongly decided. The Medlars tapes are undeniably agency records. If the issue were relitigated, I suspect that NLM might very well lose. Would NLM's operations be affected if this case were overruled either by the courts or by Congress?

Dr. Lindberg. I think it would change things radically. I am not sure it would be overruled. I am not a lawyer, but my understanding from reading the judgments is that the product, these Medlars tapes, in no way hides or shields the operations and decisions and structures of a Federal agency from public scrutiny, which I believe is the intent of the FOIA.

In fact, quite the reverse, it is the fundamental purpose of NLM to make public, to contribute and make as useful as possible all the information that it acquires.

So I am not so sure it would be altered. We would not wish to be operating in a circumstance in which anybody could take a tape for some trivial amount of money, initiate a service which we weren't aware of, couldn't monitor, couldn't guarantee, and produce a service that said National Library of Medicine, and yet wasn't true, wasn't correct, wasn't up to date.

We would very much like not to be in that circumstance.

Mr. English. I think that takes care of our questions. We appreciate your testimony and appreciate your response to the questions. There is a possibility that there may be additional written questions we may want to submit to you later, and if so, we would appreciate a timely response. Thank you for appearing before us today.

Dr. Lindberg. Thank you very much, Congressman, I enjoyed being here, and we will be happy to respond to written questions.

[Additional questions to Dr. Lindberg, with replies, are printed in appendix 2.]

Mr. English. Our next witness is Mr. Donald Quigg, who is Commissioner of Patents and Trademarks.

Mr. Quigg, good to see you. I understand that you dropped "Designate" from your title and now are the full fledged Commissioner. We are delighted to have you with us. If you would, please introduce the gentlemen who accompany you.

STATEMENT OF DONALD J. QUIGG, ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS, DEPARTMENT OF COMMERCE, ACCOMPANIED BY BRADFORD R. HUTHER, ASSISTANT COMMISSIONER FOR FINANCE AND PLANNING, PATENT AND TRADEMARK OFFICE, AND THOMAS N. PYKE, JR., DIRECTOR, CENTER FOR PROGRAMMING SCIENCE AND TECHNOLOGY, INSTITUTE FOR COMPUTER SCIENCES AND TECHNOLOGY, NATIONAL BUREAU OF STANDARDS

Mr. Quigg. Thank you, Mr. Chairman.

On my right is Mr. Bradford R. Huther, our Assistant Commissioner for Finance and Planning.

On my left is Mr. Thomas Pyke, Jr., Director of the Center for Programming Science and Technology at the National Bureau of Standards Institute for Computer Sciences and Technology.

I would point out that Mr. Pyke directed a technical capability study of our trademark automation system that was requested by the Department of Commerce.

I will briefly describe the PTO paper handling problems that were the genesis of our automation program, highlight how we approached several public policy issues that affect most programs of this magnitude, and mention some of the changes we are making as a result of our experiences. My formal written testimony covers these topics in considerable detail.

We examined over 160,000 patent and trademark applications each year. We have over 300,000 pending patent and trademark applications that must be stored, moved from location to location, during the examination process, and be readily accessible in the event of status inquiries. Over 20,000 pieces of mail affecting those applications are received each day.

One of the major steps in our examining process is a search of a very large paper file of reference materials—a loosely assembled paper data base of over 27 million documents. The integrity of this paper information base has degraded to the point where an estimated 7 percent of the patent search file documents are out of the file or misfiled.

The solution to this file integrity problem is automation. Almost 5 years ago, the Congress directed us to develop a plan to automate our patent and trademark operations.

We made the development of this plan an open process. We circulated over 700 copies of the draft plan, held a public hearing, and conducted briefings of congressional and administration staff, professional associations, and public user groups.

Prior to the implementation of our automation plan, we faced a fundamental policy issue: who would pay for it, taxpayers or users? This question was answered by enactment of Public Law 97-247 which sharply increased the user fees necessary to finance one of the administration's goals—a fully automated Patent and Trademark Office in the 1990's.

Under that law, the costs of processing a patent application have been shared about equally between user fees and taxpayer revenues, and the costs of processing a trademark application have been fully paid for by user fees. It also provides that, by the mid-1990's, when maintenance fees are payable on all utility patents applied for on or after December 12, 1980, the patent process operation, with the exception of the small entity subsidy, will be fully paid by user fees. Each year a fully detailed budget request composed of user fees and taxpayer revenues is reviewed through the administrative and Congressional appropriations process.

The administration believes that Public Law 97-247 contemplated that both taxpayer and user fee revenues be used to fund patent automation, while trademark automation was to have been totally paid by user fees. Various patent professional associations believe that Congress intended that major capital acquisitions of automation equipment be paid for solely with taxpayer funds.

We decided to automate our trademark operation first because of its small size compared to patent operations, and because the technology to support automated trademark searching capability was available in the marketplace.

Two areas of our management decisions turned out to be controversial: the exchange agreements used to create the data base and our proposal to charge a user fee for public access to the automated system—T-Search.

Our exchange agreement partners were unwilling to invest their resources if we used the full power of T-Search to compete against them. Therefore, we agreed to limit automated searching capabilities offered to the public to those that would be comparable and equivalent to paper searching techniques that the public has been using.

Trademark practitioners objected to this restriction on the grounds that they should have the same searching capabilities that would be available to our staff. To respond to those objections, we renegotiated the exchange agreements to allow the public to use the full searching capabilities. To gain access for the public, we agreed to collect and pay a royalty to the suppliers in lieu of restricting access to the electronic data bases. This solution has also been unacceptable to the public. We are now prepared to terminate the exchange agreements and the royalty provision I have just mentioned. We have already initiated action to buy the electronic data bases through conventional procurement techniques.

The other area of controversy involves our proposed charge of $40 per hour for access to the electronic data base. This fee represents the marginal cost of making the system available for public use. This proposal has not yet been made final. However, we recognize that there are individual members of the public who need access to Government records occasionally. To avoid undue impact on them, we also propose to provide a limited number of free connect hours each year to all users.

We have recently received recommendations for improving our trademark systems from the General Accounting Office, the Institute of Computer Sciences and Technology, and the Department of Commerce. We intend to implement every recommendation, most by the end of this calendar year and all by July 1, 1986.

Turning to our patent automation project, our original automation plan provided for the development of a testbed patent examining group as the means for determining whether the architecture and functionality of the automated patent system should be deployed to the remaining groups and eventually to the public. This project, which we call the automated patent system or APS, is a major state-of-the-art system which is being developed to support all patent functions. We expect to have the testbed fully operational by next summer.

At the same time, we are creating the electronic data base for patents. By the end of the year, we will begin converting about 36 million pages of U.S. patents into digital image form. Next year we will begin to exchange electronic data with the European and Japanese Patent Offices, thereby saving approximately $22 million in data base development costs. It is important to note that in Japan and Europe, automation costs are fully paid by fees. Since the

United States is the major foreign filer in both those areas, our corporations and inventors are helping underwrite the automation of the Japanese and European offices through their fees. Those who advocate that only appropriations should be used for capital outlays for the PTO automation project are, in effect, suggesting that Japanese and European corporations filing for a U.S. patent should be subsidized by U.S. taxpayers.

Our ongoing responsibility to disseminate patent information will be affected by automation. Last year, we published guidelines which set forth the policy under which the PTO proposed to directly provide electronic data base search and retrieval services in public search facilities located in the PTO and other locations which may be established by the Government. We proposed to recover through a user fee the marginal cost of extending the use of the APS system to the public.

We intend to encourage the private sector to offer commercial patent search and retrieval services outside the Government facilities. We propose to seek to avoid competition with the private sector, principally through the nonexclusive bulk sale of our computer data base tapes to commercial vendors.

The patent automation project has experienced its share of controversy too. As I mentioned, one issue involves the correct interpretation of congressional intent in the financing provisions of Public Law 97-247. A second issue is whether the public should be charged for access to the automated patent system.

Our proposed policy of having users pay for benefits which they derive from a Federal activity is based on the concepts of, one, establishing a reasonable charge to recover the costs of providing special benefits to recipients above and beyond those accruing to the public at large; and, two, attempting to avoid competing with commercial entities that already provide automated searching of patent and trademark records.

The patent professional associations have opposed our proposal to establish fees for public access of the electronic data base. Those users believe it is a public right to have free access to PTO records, whether they are in paper or electronic form. I would point out we do propose to offer a certain number of free hours to everybody so that if it is a routine necessity for access, they do get that free of charge. It is the users who are making a commercial use of the services that we would propose to have pay the cost here.

We recently evaluated and updated our automation plans to demonstrate improvements in quality, to install cost effective system capabilities, to defer desirable, but more costly or difficult to install system features until the higher priority capabilities have been thoroughly evaluated, and to involve the public in the testing and evaluation of the automated systems much earlier than originally planned. This revised plan is currently under review by the administration and should be available for public dissemination within the next few months.

As a final observation, the Patent and Trademark Office is one of the many organizations faced with the complexities and controversies associated with the development of a large scale electronic information system. It is not a matter of whether an electronic system will become a substitute for our paper records, but when and how it is to happen. Given an effective electronic alternative, our valuable information resources can become more useful and manageable.

Mr. Chairman, that concludes my prepared testimony. I would be happy to answer any questions the subcommittee may have.

[The prepared statement of Mr. Quigg follows:]

STATEMENT OF

DONALD J. QUIGG

ASSISTANT SECRETARY AND
COMMISSIONER OF PATENTS AND TRADEMARKS - DESIGNATE

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT INFORMATION,
JUSTICE, AND AGRICULTURE
COMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

OCTOBER 18, 1985

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to discuss the Patent and Trademark Office's plans for the electronic collection, use, and dissemination of patent and trademark information. First, I will briefly describe the PTO's paper-handling problems that are the genesis of our automation program. Second, I will highlight how we approached several important public policy issues that typically affect most projects of this magnitude. Last, I will mention some of the planning changes we are in the process of making as a result of our experience to date.

Background

The mission of the Patent and Trademark Office (PTO) is to promote the national economy by administering provisions of the patent and trademark laws. Patent laws encourage technological advances by providing incentives to invent, invest in, and disclose new technology. Trademark laws assist businesses in protecting their investments in the promotion of goods and services, and safeguarding consumers against confusion and deception in the marketplace about the origin of goods and services. In carrying out this mission, the PTO examines over 160,000 patent and trademark applications each year. Our current workload consists of over 300,000 pending patent and trademark applications which must be stored, moved from location to location during the examination process, and be readily accessible in the event of status inquiries. Over 20,000 pieces of mail affecting the processing of those applications are received each day.

One of the major steps in our examining process is a search of a very large paper file of reference materials -- a loosely assembled paper data base of over 27 million documents. The integrity of this paper information base has degraded to the point where an estimated seven percent of the patent search file documents are missing or misfiled. We experience an even higher percent of missing or misfiled documents in search files involving newer technologies such as solar devices, biotechnology, or semiconductors. Studies have shown that uncited patents are a major cause for findings of invalidity by the courts. Similar problems exist with the integrity of the trademark paper search files. These labor intensive, error-prone paper data bases are the core of our problem.

For many years, there has been almost universal acceptance that the solution to the lack of integrity for this enormous, constantly growing paper data base simply cannot be found through any means other than automation. Almost five years ago, the Congress directed the Commissioner of Patents and Trademarks to develop "...a plan to identify and if necessary develop or have developed computerized data and retrieval systems equivalent to the latest state of the art which can be applied to all aspects of the operation of the Patent and Trademark Office....the report shall specify the cost of implementing the plan, how rapidly the plan can be implemented by the Patent and Trademark Office, without regard to funding which may be available for this purpose in the future."

We made the development of the plan mandated by Congress an open process. A special advisory committee consisting of experts in the field of automation from other Government agencies reviewed and evaluated an early draft of the plan. We circulated over 700 copies of the draft plan to individuals, commercial organizations, and interested professional associations for their comment.

We held a hearing to provide a forum for public comment and reaction. We conducted briefings of Congressional and Administration staff, professional associations, and public user groups to establish a clear understanding of our short and long-range automation objectives.

Prior to the implementation of our automation plan, we faced a fundamental policy issue: Who would pay for it -- taxpayers or users? This question was answered by enactment of authorizing legislation for the PTO that sharply increased the user fees necessary to finance one of the Administration's goals -- a fully automated Patent and Trademark Office in the 1990's. Under that law, enacted as Public Law 97-247 on August 27, 1982, the costs of patent automation ($48.4 million for the fiscal years 1983-1985) have been shared about equally between user fees and taxpayer revenues, and the costs of trademark automation ($15.3 million for the same three-year period) have been paid for almost totally by user fees.

As a result of this intensive planning and legislative process, by December 1982 we had completed the plan to guide our automation efforts and we had in place the necessary funding mechanism to begin the development of the automated systems. Moreover, there existed a clearly identified constituent group of interested practitioners, public searchers, and representatives of our nationwide Patent Depository Library network, who had begun to coalesce into a network of *ad hoc* committees to monitor our automation project and provide their advice and criticisms throughout the implementation of the plan.

Trademark Automation

We decided to automate our trademark operation first because of its small size compared to patent operations, and because the technology to support automated trademark searching capability was available in the market place. Full automation of the trademark functions involved reaching three objectives:

(1) *completing the automated trademark application monitoring system (TRAM)* -- TRAM was completed in April 1983 except for the additional enhancements required for the automated photocomposition capability, which were implemented in March 1985. TRAM provides the capability of tracking the movement and status of a working inventory of more than 76,000 pending applications and bibliographic data on nearly 600,000 active trademark registrations.

(2) providing an automated search system (T-Search) -- We awarded a contract under Federal procurement regulations to the Systems Development Corporation (SDC) in December 1983 for the hardware and sophisticated searching software necessary to search any of the data items comprising the trademark registration.

(3) creating an electronic trademark data base -- This involved converting more than 500,000 paper records to machine-processable form. Significantly, this electronic data base will become the official trademark register, ultimately replacing the cumbersome, error-prone bound paper volumes that have been serving this purpose since 1881. Using the authority of section 6 of title 35, United States Code, we entered into exchange agreements with three private firms to create, at a very low cost, electronic data bases of the text and digitized facsimiles of registered trademarks and incoming trademark applications. These data bases were provided to the PTO in exchange for (1) copies of PTO documents; and (2) certain restrictions on the automated techniques for public access to the data bases and distribution of the data bases to third parties.

The trademark automation project has been controversial. The two most significant issues relate to the exchange agreements used to create the data base and our proposal to charge a user fee for public access to the T-Search system.

Since the electronic data base would be used by both examiners and the public, our exchange agreement partners were unwilling to invest their resources if we used the full power of the automated system to compete against them. The companies proposed and we agreed to limit automated searching capabilities offered to the public to those that would be "comparable and equivalent" to paper searching techniques. Our major reasons for this decision were (1) we could not project sufficient resources to pay for the computerized trademark data base under the existing fee structure; (2) this was the best and possibly the only way to automate the trademark search system at that time; (3) the terms and conditions of the exchange agreements were not irrevocable; and (4) this concept was consistent with the provision of OMB Circular A-76 (Performance of Commercial Activities) regarding the avoidance of Federal competition with the private sector.

Trademark practitioners objected to the "comparable and equivalent" searching restriction on the grounds that they should have the same searching capabilities as those being developed for our staff of trademark examiners. In an effort to respond to those objections, the PTO renegotiated the agreements to allow the public to use the full searching capabilities of T-Search. To gain access for the public, the PTO agreed to collect and pay a royalty to these firms in lieu of restricting access to the electronic data bases. We held a public hearing in September 1984, and a majority of the commenters opposed the royalty payment to search trademark records.

In its review of the trademark automation project, the General Accounting Office also disagreed with our decision to use exchange agreement authority to acquire the machine-readable trademark data base. GAO concluded that the exchanges were procurements of commercial ADP support services subject to the requirements of the Brooks Act and Federal procurement regulations. To address these concerns, we are prepared to terminate the exchange agreements and have already initiated action to buy the electronic data bases through conventional procurement techniques. Policy guidance on how we are to proceed is being provided to us by the Deputy Secretary of Commerce.

The other area of user fee controversy involves our proposed charge of $40 per hour for access to the electronic data base. This hourly connect fee, which represents the marginal cost of making the system available for public use, was proposed in the Federal Register of August 7, 1984. Our proposal was based on the general user charge guidance contained in OMB Circular A-25 that those who benefit most directly from a clearly identifiable Federal service should pay for that service. Because of the public debate over the exchange agreements, those rules have not yet been made final. However, in addressing the issue of access fees, we have recognized that there are individual members of the public who have reason to access Government records occasionally for their own purpose. To avoid undue impact on this segment of the population, the PTO also proposed to provide a limited number of free connect hours each year to all users of the automated files. However, we have not made a final decision on any of these proposals because of the concern expressed by the Congress during the reauthorization process.

Another issue of concern to the public is the ultimate disposition of the paper documents. We have decided that the paper files will be retained until the automated system has been fully tested and evaluated and, in addition, until a public hearing has been held.

The General Accounting Office, the Institute of Computer Sciences and Technology, and the Department of Commerce's financial and management teams have recently given us recommendations for improving our trademark systems. We intend to implement every recommendation, most of which will be completed by the end of this calendar year. While these actions will enhance the performance of the automated systems, I am pleased to report to the Subcommittee that our original trademark objectives are nearly met. TRAM has been completed. Most of our examiners are conducting text searches on T-Search and they generally report that improvements in the quality of searching are being achieved. And the official certification of this electronic trademark data base used in searching trademark registrations is expected to occur by the end of December.

Patent Automation

Our original automation plan for patents provided for the development of a "testbed" patent examining group as the means for determining whether the architecture and functionality of the automated patent system should be deployed to the remaining groups and eventually to the public. This project, which we call the Automated Patent System (APS), is a major, state-of-the-art system which is being developed in two parts to support all patent functions. The first part of APS includes text and image processing, electronic workstation and support services, a high-speed local area data network, and administrative data support. The second part is being developed separately to support preparation of electronic data for the APS through image backfile conversion, on-going text and image data conversion, copy order processing, incoming electronic mail, and photo-composition preparation.

The implementation strategy for APS is to acquire, develop, integrate, and test the individual components in the testbed before we commit to full deployment of the system. In April 1984, we awarded a contract to the Planning Research Corporation (PRC) which teamed with Chemical Abstract Services (CAS), a not-for-profit arm of the American Chemical Society. The system architecture has been refined and approved, most of the hardware needed for the testbed either has been installed or will be acquired shortly, and the details of the data base and software design are approaching completion. Based on the APS equipment characteristics that are now clearly established, final site preparation plans to meet all space, power, and cooling requirements are being prepared and reviewed. Although we have incurred higher than planned up-front contract costs, that have affected our implementation schedule and flexibility somewhat, the procurement and installation of the APS hardware and software are proceeding smoothly. We expect to have the testbed fully operational by next summer.

Simultaneous with APS development activities, we have pursued the creation of the electronic data base for patents. Unlike the trademark situation, at the beginning of the patent project we had already accumulated on magnetic tape the full text files for most patents issued since 1970. After converting this data base into a form compatible with the APS system, we began loading the converted text data file into the APS data storage devices in July. By the end of 1985, we expect to begin converting an estimated 36 million pages of U.S. patents into digital image form. To achieve the highest quality resolution, the PTO's archival set of printed patents, stored in an underground storage facility in Pennsylvania, will be used as the source documents. Conversion of the entire paper file of U.S. patents to electronic form should be completed during 1988.

The PTO has an on-going responsibility to disseminate patent information to foster the spread of scientific and technical knowledge. As a result of automation, new forms of patent data will be created and new techniques will become available to facilitate the use of one of the world's largest technical and scientific information resources.

We considered several approaches to the dissemination of patent data. On June 14, 1984, we published Electronic Patent Data Dissemination Guidelines in the Federal Register and at the same time invited comments to the guidelines. These guidelines set forth the policy that the PTO will directly provide electronic data base search and retrieval services in public search facilities located in the PTO and other locations which may be established by the Government. Fees would be charged for use of sophisticated workstations and search techniques at the marginal cost of extending use of the APS system to the public.

We intend to pursue our dissemination mission indirectly by encouraging the private sector to offer commercial patent search and retrieval services outside the Government facilities. We will seek to avoid competition with the private sector in providing such services to the public, principally through the non-exclusive bulk sale of our computer data base tapes to commercial vendors. The selling price will be based on the marginal cost of our distribution services plus a fair market value charge for the data.

To facilitate international coordination, the PTO initiated negotiations with the European Patent Office and the Japanese Patent Office to ensure that our respective automation plans were fully coordinated and as compatible as possible. A trilateral agreement, signed in October 1983, established the principle that electronic data created by each office will be exchanged with the other offices for the marginal cost of duplicating and shipping the data. At a third trilateral meeting held this month in Tokyo, we reached a final agreement on the character and image data standards to be used for the exchange of data that will begin next year. These developments are highly significant to patent applicants because they will enable the Office to build a more complete and accessible data base, and should enhance our ability to achieve widespread, low-cost dissemination of patented technology. The estimated cost of converting these paper records, which represent 70 years of European and Japanese patents, to electronic data is about $22 million.

The patent automation project has experienced its share of controversy, too. The most significant issues involve the correct interpretation of Congressional intent in the financing provisions of Public Law 97-247 and whether the public should be charged for access to the automated patent system. Regarding the former, the Administration believes that Public Law 97-247 contemplated that patent automation costs be funded by a combination of user fees and tax revenues. Various patent professional associations believe that Congress intended that major capital acquisitions of automation equipment be paid for solely with taxpayer funding.

The patent professional associations have opposed our proposal to establish fees for public access of the electronic data base. Prior to automation and the enactment of Public Law 97-247, access to the information data base in the public search rooms was made possible through taxpayer funds. These records are used by the general public, by those who stand to benefit from their intellectual property, and by those who make a living by searching Office records for others. These users believe it is a public right to have free access to Office records, whether they are in paper or electronic form.

As I indicated, our proposed policy of having users pay for benefits which they derive from a Federal activity is based on the concepts of (1) establishing a reasonable charge to recover the costs of providing special benefits to recipients above and beyond those accruing to the public at large; and (2) attempting to avoid competing with commercial entities that already provide automated searching of patent and trademark records.

Future Direction

The issues that I have described for you today are being addressed by the Congress in the reauthorization of the Patent and Trademark Office program for the next three years. Once these issues have been settled, our future automation progress will be closely monitored during the Congressional oversight and appropriation processes. We stand ready to brief other interested Congressional committees at key decision points throughout the implementation process. As a key step in that process, we recently reevaluated and updated our automation plans as follows: First priority will be given to demonstrating improvements in quality which automation brings to our patent and trademark examining programs. Assuming clear evidence that the automated system meets that basic quality test, second priority will be given to installing cost-effective system capabilities, such as reducing costs associated with paper search file maintenance, and printing. Desirable, but more costly or difficult to install system features which will improve operations and service to the public will be deferred until the higher priority capabilities have been thoroughly evaluated. In addition, public participation in the testing and evaluation of the automated systems will occur much earlier than originally planned.

Our revised automation master plan is currently under review by the Administration and should be available for public dissemination within the next few months.

As a final observation, the Patent and Trademark Office is one of many organizations faced with the complexities and controversies associated with the development of a large-scale electronic information system. It is not a matter of whether an electronic system will become a substitute for our paper records, but when and how it is to happen. Given an effective electronic alternative, our valuable information resources can become more useful and manageable.

Mr. Chairman, that concludes my formal testimony. I would be happy to answer any questions the Subcommittee may have.

Mr. ENGLISH. Thank you very much, Commissioner.

I have to say trademarks are certainly a new area to me, and I would like to go over some of the basics if we could. Is it fair to say that public notice is an essential feature of the trademark registration and that maintenance of public files is a major function of the trademark office?

Mr. QUIGG. Well, I think an important feature of trademark usage is the ability to determine, before adopting a mark, whether or not somebody else happens to have that mark registered. So, to that extent, I would say that the notice itself is important.

Mr. ENGLISH. In the report accompanying H.R. 2434, the House Judiciary Committee wrote—and I am quoting here—"Having patent and trademark records freely available to the public and widely disseminated gives a valuable benefit to the public at large."

Do you agree with that statement?

Mr. QUIGG. I agree with that wholeheartedly. That is one of the reasons we propose to provide the fixed number of hours free access for everyone.

Mr. ENGLISH. OMB Circular A-25 on user fees provides that no charge should be made for a service that primarily benefits the general public. Based on the findings of the Judiciary Committee, which you have just stated you agree with, it sounds like the providing of public availability of trademarks files qualifies as a service for which no charge is appropriate. Do you disagree with that?

Mr. QUIGG. I think that for the small amount of searching that needs to be done by the general public, that the proposed number of free hours would take care of that. We have a fairly compact number of commercial searchers who utilize the search facilities in the Patent and Trademark Office, charge for those services, charge their clients for them, and we feel that when those searchers use the facilities for that type of operation, that they should be charged user fees.

Mr. ENGLISH. So, you would agree that the public availability of trademark files qualifies as a service for which no charge would be appropriate?

Mr. QUIGG. Yes, sir.

Mr. ENGLISH. The exchange agreements PTO used to acquire an electronic data base of trademark information included a limitation on public access to the data base. My question is whether an agency can agree by contract to limit the access to public information in any form.

Let me ask you a hypothetical question. If PTO personnel created an electronic data base of public information, would a machine-readable copy of that data base be available under the Freedom of Information Act?

Mr. HUTHER. Congressman, the interpretation that we have made is that we would supply under the Freedom of Information Act or under a court order a paper facsimile copy of the electronic data base, but would not under the Freedom of Information Act feel compelled to actually provide a copy of the tape itself. It is the information which the public would be entitled to, not necessarily the medium of disseminating that information under the Freedom of Information Act.

Mr. English. It would seem that PTO gave away public rights under the FOIA in exchange for computer services that could have been purchased. Would you care to comment on the characterization of the transaction?

Mr. Quigg. I would say that we negotiated the agreements, and the concessions that were made were made because that was the only way the agreement could be effected. I think that even being able to directly purchase would have been impossible, even had we had the money to do it, simply because the exchange partners did not want others competing with them.

Mr. Huther. As an additional comment on that, I should point out that one of the issues we faced at the time of our development of the Trademark Exchange Agreement was whether or not the U.S. Patent and Trademark Office should be a competitor with commercial organizations who were providing on-line commercial services to exactly the same trademark data base of information that we were in the process of developing.

So we had the question of whether or not we should be in direct competition with them and determined in accordance with the negotiation of the exchange agreements that the restrictions imposed by vendors in exchange for the very valuable data base that would otherwise have cost a great deal of money on the part of users or taxpayers to develop, would extend to the point we would not be competing with them.

That is to say we would not have more sophisticated search software than they were using to provide on-line commercial services.

Mr. English. Is there anything in the PTO's authorization that permits PTO to limit public access to public trademark information in any way?

Mr. Huther. Nothing specifically, no, sir.

Mr. English. There is nothing in the law that allows that?

Mr. Huther. Nothing specifically that prohibits or allows it specifically.

Mr. English. What costs are included in the charges for users?

Mr. Huther. The $40 an hour fee that Mr. Quigg referred reflects the marginal cost of providing public access, that is a portion of the computer time, a portion of the staff time to support it, all of the logistical supplies necessary for public access, including the terminals.

Mr. English. Will users be asked to contribute toward the cost of the system development?

Mr. Huther. Not in terms of payment of the $40 an hour charge. Users under the provisions of Public Law 97-247 that was enacted in 1982, established the principle that there would not be from October 1, 1982, forward, any taxpayer money to support the trademark operation. So in terms of the general fees that we have been charging for the last 3 years, that is in the form of applicants' filing fees and the other types of fees that we are charging trademark practitioners, those fees were to be used to develop the system.

Mr. English. Are users of the reading room charged now?

Mr. Huther. In the Trademark Search Library or Patent Search Room today, no. Not for direct access to the paper files, no.

Mr. English. Are you contemplating any reading room charges?

Mr. Huther. We are continuing to contemplate the $40 an hour marginal fee for trademark searching. Another option, as is the case with the paper search file, the costs of that file could be paid by the trademark applicants. We could continue to allow similar arrangement to occur under the electronic system.

Mr. English. Will the paper files remain accessible once the automated system is in place?

Mr. Quigg. The paper files are going to remain available until the automated system has been completed, has been fully tested, and a hearing has been held.

At that time, it is our intention to do away with the paper file.

Mr. English. Given all the problems that your office has encountered in its automation efforts, if you were starting all over again would you do it the same way?

Mr. Quigg. One does tend to learn by experience.

Mr. English. Well, I certainly can appreciate that. I want to thank you for your testimony. The problems that are experienced by PTO illustrate some of the difficulties that can arise when agency records are converted to electronic format. It is not easy to strike a balance between the sometimes conflicting principles of openness, fairness and efficiency. It seems to me that this automation effort got into so much trouble because the Trademark Office did not pay enough attention to the needs of those who were affected by its activities.

The Office was concerned with its own needs, and narrow special interests. That is why corrective legislation is, of course, now working its way through Congress. I think that everyone can learn a lot from the experiences of the Trademark Office and I hope that other agencies will be able to avoid the mistakes that were made.

Commissioner, again I want to thank you for your testimony and we may also have additional written questions for you and we would appreciate a timely response to those questions.

Mr. Quigg. Thank you very much, Mr. Chairman. I would like to add one thing that kind of reflects on your last comments.

I would agree that we did make some mistakes in the way we approached the automation of trademarks. We tried our best to determine within our own ranks what trademark practitioners' requirements are. I have told the U.S. Trademark Association that my policy will be not to tell them what they are going to get but to give them some options, and it will be their election as long as they are willing to pay for it, we will do our level best to provide that.

Mr. English. Thank you, Commissioner. I appreciate that.

Our next witness is Mr. Thomas Giammo, Associate Director, Information Management and Technology Division of the General Accounting Office.

We will let you introduce the gentleman accompanying you.

STATEMENT OF THOMAS P. GIAMMO, ASSOCIATE DIRECTOR, INFORMATION MANAGEMENT AND TECHNOLOGY DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY KENNETH WINTER

Mr. Giammo. Mr. Ken Winter of our office is with me, sir.

Mr. ENGLISH. Your complete written testimony will be made a part of the testimony, and you may proceed as you wish.

Mr. GIAMMO. We are pleased to be here today to discuss the operations of the Trademark Office at the Patent and Trademark Office. This statement is based on our April 18, 1985 report given to the chairman of the House Committee on Government Operations, the one entitled "Patent and Trademark Office Needs To Better Manage Automation of Its Trademark Operations." I am directing my statement to the concerns of this hearing, specifically, PTO's use of nonmonetary exchange agreements and the subsequent restriction of public usage of PTO's new automated search system. With your permission, I would like to submit this report for the record.

Mr. ENGLISH. Without objection, so ordered.

[The GAO report, "Patent and Trademark Office Needs To Better Manage Automation of Its Trademark Operations," GAO/IMTEC-85-8, April 19, 1985, is available from the General Accounting Office.

Mr. GIAMMO. In reviewing PTO's trademark automation efforts, we primarily addressed several management issues. We focused on PTO's: One, analysis of user requirements; two, 1982 trademark automation cost/benefit analysis; and three, contracting practices and procedures for acquiring the automated trademark systems.

In these areas we found that PTO had encountered management problems in automating its trademark operations. For example, PTO had not: One, thoroughly analyzed or developed its requirements for three automated trademark systems; two, adequately assessed the costs and benefits of trademark automation; three, fully tested its trademark search system before accepting it from a private contractor; and four, properly managed its exchange agreements.

Although we primarily concentrated on PTO's management of its automation program, our review did result in findings that are relevant to the issues of interest to this committee, particularly public access to trademark information held by PTO.

Specifically, we found that: Using exchange agreements with private-sector vendors, as authorized by Public Law 97-247, PTO "paid for" the preparation of a computerized data base version of its trademark information by committing to give the vendors free copies of present and future versions of this information and by restricting the public's access to the vendor-provided data base.

PTO later loosened these restrictions on public access but, in compensation to the vendors, agreed to collect a royalty fee from the public which it was to pass on to the vendors. We have heard here today that they are agreeable to relinquishing the royalty fee.

PTO did not treat the exchange agreements as subject to Federal procurement laws and regulations, and thus avoided some procedures that might have resulted in a more beneficial arrangement.

In response to a congressional mandate that it develop a plan for the automation of its operations, PTO submitted an Automation Master Plan to Congress in 1982. As part of this plan, PTO was to acquire "automated" versions of its paper trademark search files to serve as the data bases for a new automated search system. This automated search system was to have greater capability to perform trademark searches.

In carrying out its plan, PTO acquired computerized data base versions of trademark registration information through three nonmonetary arrangements, known as exchange agreements, with private-sector vendors. Under the exchange agreements, the firms agreed to produce trademark data based in machine-readable form for PTO.

These data bases, which were to be installed by PTO as an integral part of its own automated search system, would be used by PTO and the public in researching trademark registrations. In return, PTO agreed to furnish the firms with copies of PTO's trademark registration information for the firms' own use and accepted restrictions on public access to the automated data base form of this information.

The restrictions involved not permitting the public to use the advanced features of the PTO automated search system. One of the restrictions involved limiting public access to the automated system to a level of capability "comparable and equivalent" to a manual search of paper files. Thus, the public was not to have been able to use the advanced automated techniques available to PTO examiners, such as automated searching by phonetics.

In addition, under the agreements, PTO agreed to fix the price of its "Official Gazette-Trademarks" computer tapes, containing recent trademark transactions, to a figure seven times its previous contractually agreed to price; this, in effect, inhibited public access to this form of trademark information.

In 1984, after a trademark industry outcry regarding these planned restrictions as you have heard this morning as Mr. Quigg has described, PTO decided to ease one of the restrictions by providing the public with full access to its automated search system. Nevertheless, because of the contractual nature of the exchange agreements' public-use restrictions, PTO was required to renegotiate with the companies to obtain their approval for improved public access to PTO's automated system.

Subsequent amendments to the agreements assigned the relaxation of this restriction an estimated present value of $3.18 million to the vendors, which PTO was to collect from the public in the form of a $30-per-hour royalty fee, as it was called in the renegotiated royalty fee agreements.

The royalty fee was then to be paid to companies. This $30 royalty fee was to be added to a $40 base fee, which PTO had decided to impose on the public for the "comparable and equivalent" use of the automated system—for a total fee of $70 per hour. As we know, that has not been put into effect and, as we heard this morning, the PTO has reconsidered the royalty matter.

The manner in which PTO has administered its exchange agreement authority has also created problems. On March 13, 1985, we issued a legal opinion on PTO's exchanges. We concluded that the exchanges were procurements of commercial automatic data processing, ADP, support services subject to the requirements of Public Law 89-306, the Brooks Act, and the general requirements under the Federal Procurement Regulation.

PTO's official position, as stated in an April 10, 1985, letter to us, was that PTO does not believe that exchanges are procurements under the Brooks Act or FPR. Also, in a May 2, 1985, letter to us, the Department of Commerce essentially concurred with PTO's position. Consequently, none of the exchange agreements were developed with the procurement regulations in mind. Furthermore, in reviewing PTO's actions, we concluded that PTO did not obtain maximum practical competition on two of the three exchange agreements, as required by the Federal Procurement Regulation.

In summary, sir, PTO did not adequately consider all future impacts of the exchange agreements on itself and the public. By allowing restrictions on public access in the original agreements, PTO's freedom to offer information on trademarks to the public was limited. An example of this is that it became necessary for PTO to negotiate a royalty fee to be paid by the public users, and then negotiate out of that royalty fee to be paid for full use of the PTO's automated system.

As part of the recommendations contained in our April 19 report, we recommended that the Secretary of Commerce direct the Acting Commissioner of Patents and Trademarks to make all reasonable efforts to expeditiously and economically acquire unrestricted ownership of the trademark data bases obtained through the exchange agreements. We also recommended that PTO establish criteria for determining when future ADP resource exchange agreements should be used and develop procedures to ensure that these exchanges comply with applicable Federal procurement regulations.

Such criteria and procedures should also require that PTO thoroughly analyze the value of future agreements and fully assess their impact on PTO and the public. We added that, if PTO does not take steps to implement the above recommendation regarding exchange agreements, the Congress should consider withdrawing PTO's exchange agreement authority for ADP resource acquisitions.

Mr. Chairman, this concludes the summary of my prepared remarks and any questions are welcome.

[The prepared statement of Mr. Giammo follows:]

PREPARED STATEMENT OF THOMAS P. GIAMMO

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the automation of trademark operations at the Department of Commerce's Patent and Trademark Office (PTO). My statement is based on the findings, conclusions, and recommendations provided in our April 19, 1985, report to the Chairman of the House Committee on Government Operations entitled Patent and Trademark Office Needs to Better Manage Automation of Its Trademark Operations (GAO/IMTEC-85-8). I am directing my statement to the concerns of this hearing, specifically, PTO's use of non-monetary exchange agreements and the subsequent restriction of public usage of PTO's new automated search system. With your permission, I would like to submit this report for the record.

In reviewing PTO's trademark automation efforts, we primarily addressed several management issues. We focused on PTO's (1) analysis of user requirements, (2) 1982 trademark automation cost/benefit analysis, and (3) contracting practices and procedures for acquiring the automated trademark systems.

In these areas we found that PTO had encountered management problems in automating its trademark operations. For example, PTO had not (1) thoroughly analyzed or developed its requirements for three automated trademark systems, (2) adequately assessed the costs and benefits of trademark automation, (3) fully tested its trademark search system before accepting it from a private contractor, and (4) properly managed its exchange agreements.

Although we primarily concentrated on PTO's management of its automation program, our review did result in findings that are relevant to the issues of interest to this committee, particularly public access to trademark information held by PTO.

Specifically, we found that

--using exchange agreements with private-sector vendors (as authorized by Public Law 97-247), PTO "paid for" the preparation of a computerized data base version of its trademark information by committing to give the vendors free copies of present and future versions of this information and by restricting the public's access to the data base;

--PTO later loosened these restrictions on public access but, in compensation to the vendors, agreed to collect a royalty fee from the public which it was to pass on to the vendors; and

--PTO did not treat the exchange agreements as subject to federal procurement laws and regulations, and thus avoided some procedures that might have resulted in a more beneficial arrangement.

Let me discuss these findings in greater detail. Trademarks are words and symbols that identify and distinguish products; they are used to indicate the origin of goods and services. Trademarks are registered with PTO primarily to help protect the owner's rights to the trademark. PTO trademark examiners compare the applied-for trademark against already-existing trademarks to determine whether they are the same or confusingly similar. Historically, this has been accomplished by manually searching through PTO's paper files, which contain information on previously registered trademarks and on new applications for registration.

Others, in addition to PTO examiners, need access to PTO's information concerning trademarks (for example, those interested in applying for a new trademark or those interested in tracing a particular product). Any member of the public has been able to search the paper files free of charge. Public searchers include both interested individuals and those professional searchers acting on behalf of clients for a fee. Since 1982, PTO has issued approximately 35,000 permanent and temporary passes to the public for use of the search room.

In response to a congressional mandate that it develop a plan for the automation of its operations, PTO submitted an Automation Master Plan to Congress in 1982. As part of this plan, PTO was to acquire "automated" versions of its paper trademark search files to serve as the data bases for a new automated search system. This automated search system was to have greater capability to perform trademark searches.

In carrying out its plan, PTO acquired computerized data base versions of trademark registration information through three non-monetary arrangements, known as exchange agreements, with private-sector vendors. Under the exchange agreements, the firms agreed to produce trademark data bases in machine-readable form for

PTO. These data bases, which were to be installed by PTO as an integral part of its own automated search system, would be used by PTO and the public in researching trademark registrations. In return, PTO agreed to furnish the firms with copies of PTO's trademark registration information for the firms' own use and accepted restrictions on public access to the automated data base form of this information. The restrictions involved not permitting the public to use the advanced features of the PTO automated search system. One of the restrictions involved limiting public access to the automated system to a level of capability "comparable and equivalent" to a manual search of paper files. Thus, the public was not to have been able to use the advanced automated techniques available to PTO examiners, such as automated searching by phonetics. In addition, under the agreements, PTO agreed to fix the price of its "Official Gazette-Trademarks" computer tapes, containing recent trademark transactions, to a figure seven times its previous price; this, in effect, inhibited public access to this form of trademark information.

In 1984, after a trademark industry outcry regarding these planned restrictions, PTO decided to ease one of the restrictions by providing the public with full access to its automated search system. Nevertheless, because of the contractual nature of the exchange agreements' public-use restrictions, PTO was required to renegotiate with the companies to obtain their approval for improved public access to PTO's automated system. Subsequent amendments to the agreements assigned the relaxation of this restriction an estimated present value of $3.18 million, which PTO was to collect from the public in the form of a $30-per-hour

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"royalty fee." The royalty fee was then to be paid to companies. This $30 royalty fee was to be added to a $40 base fee, which PTO had decided to impose on the public for the "comparable and equivalent" use of the automated system--for a total fee of $70 per hour. As of September 1985, these fees had not been formally instituted. PTO stated at the same time that it intended further renegotiation of the exchange agreements.

The manner in which PTO has administered its exchange agreement authority has also created problems. On March 13, 1985, we issued a legal opinion on PTO's exchanges. We concluded that the exchanges were procurements of commercial automatic data processing (ADP) support services subject to the requirements of Public Law 89-306, the Brooks Act, and the Federal Procurement Regulation. PTO's official position, as stated in an April 10, 1985, letter to us was that PTO does not believe that exchanges are procurements under the Brooks Act. Also, in a May 2, 1985, letter to us, the Department of Commerce essentially concurred with PTO's position. Consequently, none of the exchange agreements were developed with the procurement regulations in mind. Furthermore, in reviewing PTO's actions, we concluded that PTO did not obtain maximum practical competition on two of the three exchange agreements, as required by the Federal Procurement Regulation.

In summary, PTO did not adequately consider all future impacts of the exchange agreements on itself and the public. By allowing restrictions on public access in the original agreements, PTO's freedom to offer information on trademarks to the public was limited. An example of this is that it became necessary for PTO to negotiate a royalty fee to be paid by the public users for full use of PTO's automated system.

As part of the recommendations contained in our April 19 report, we recommended that the Secretary of Commerce direct the Acting Commissioner of Patents and Trademarks to make all reasonable efforts to expeditiously and economically acquire unrestricted ownership of the trademark data bases obtained through the exchange agreements. We also recommended that PTO establish criteria for determining when future ADP resource exchange agreements should be used and develop procedures to ensure that these exchanges comply with applicable federal procurement regulations. Such criteria and procedures should also require that PTO thoroughly analyze the value of future agreements and fully assess their impact on PTO and the public. We added that, if PTO does not take steps to implement the above recommendation regarding exchange agreements, the Congress should consider withdrawing PTO's exchange agreement authority for ADP resource acquisitions.

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Mr. Chairman, this concludes my prepared remarks. I welcome any questions you may have.

Mr. ENGLISH. Thank you very much, Mr. Giammo.

How did PTO calculate the fees it planned to charge the public for access to the system?

Mr. GIAMMO. It went through a calculation, both on the $30—excuse me the $40 comparable and equivalent usage fee and on the additional $30 surcharge when that was to be imposed.

Yes, it did.

Mr. ENGLISH. Are you able to compare the costs that PTO planned to pass on with the costs other agencies charge?

Mr. GIAMMO. We have not studied the costs of other agencies. They do appear to be high to us, but that is not based upon any kind of particular study. One point I might mention in that regard is that it has been alleged that the $40 an hour fee represents the marginal cost for providing such public access. We would disagree with that. We believe that somewhere from $10 to $20 of that fee represents an allocation of general overhead that would be incurred anyway, regardless of whether there was public access to it.

Mr. ENGLISH. Do you think that OMB Circular A-25 on user fees is helpful in establishing the fees for automated information systems?

Mr. GIAMMO. GAO has seen problems in the past with the use of A-25 to support such fees. We issued a report in 1979 titled "Better Information Management Policies Are Needed." We addressed many of the issues that have arisen in this context, especially in the PTO case.

In that report, we singled out the ambiguities inherent in OMB Circular A-25 as a major source of the confusion that exists throughout the government in the area.

A-25, which I believe was issued in 1959 if I am not mistaken, did not have information services in mind when it was written. It seems to primarily address governmental services that are provided to confer a direct, tangible benefit on the recipient. Examples they use are the issuing of patents, issuing of licenses, furnishing of crop insurance and so forth.

In this sense, I think, PTO is justified in charging for the granting of a trademark registration, which is such a service. I don't believe access to public information is covered by A-25 as something to be legitimately charged for. It doesn't enable the beneficiary to obtain immediate or substantial gains as opposed to the general public, which is a condition required by the circular.

I admit the circular, as I said, is ambiguous and that other people have other interpretations of that wording.

I would go back to the recommendation we made in our 1975 report: that A-25 is one of the primary causes of the problem, and it ought to be clarified.

Mr. ENGLISH. I don't have any further questions, Mr. Giammo. I want to thank you for your testimony and for your responses to the questions. If we have any additional questions, we will submit those to you and we would appreciate a timely response.

Thank you for coming before us.

Next we will have a panel of Mr. Guy M. Blynn, executive vice president, U.S. Trademark Association, and Herbert C. Wamsley, executive director, Intellectual Property Owners, Inc.

I want to welcome both of you gentlemen.

Mr. Blynn, we will let you start off.

STATEMENT OF GUY M. BLYNN, EXECUTIVE VICE PRESIDENT, UNITED STATES TRADEMARK ASSOCIATION

Mr. Blynn. Thank you, Mr. Chairman.

The United States Trademark Association appreciates this opportunity to express its views on the topic of electronic collection and dissemination of information by Federal agencies in general, and the automation of the U.S. PTO in particular.

The association has filed a written statement with the committee and it is my understanding that it will be made part of the record.

Mr. English. Without objection, it will. We will be happy to receive a summary of your testimony if you would provide that.

Mr. Blynn. Thank you, Mr. Chairman.

My name is Guy Blynn. I am the executive vice president of the United States Trademark Association. The association, with a worldwide membership of over 1,700 corporations, law firms, professional associations and others interested in promoting an understanding of the trademark concept, is the most prominent organization of its type in the United States. Like all of the association's officers, board members, and committee members, I serve on a voluntary basis.

I also happen to be a practicing attorney, presently senior counsel to a major American corporation. In my days with a private law firm, I represented numerous large and small businesses in trademark and related matters.

In preparing my remarks for this morning, I recalled that almost 210 years ago our Founding Fathers issued a declaration that our Government was to be one of the people, by the people, and for the people. In the course of the difficult, and sometimes painful, process of automating its trademark operations, it appears that the Patent and Trademark Office sometimes has lost sight of these bedrock principles upon which our form of government is founded.

In many ways, it does not appear that the Patent and Trademark Office has regarded its mission as being to render a service for the people. Most certainly, the process of automating has not been one that has been performed by the people nor has it been designed with the people's benefit in mind. Rather, the process has been pursued by and for the benefit of the Patent and Trademark Office, often at the expense of the public purposes the PTO is tasked by statute with meeting.

Let me begin my brief remarks by making a point of differentiation between the trademark operations of the Patent and Trademark Office and some of the other agencies whose automated systems the committee may consider. Trademarks are registered federally by the PTO with the primary purpose of creating a public record of rights. Once that record is created through the registration process, the law presumes that everyone is aware of the contents of this public record. The law says that everyone has knowledge, constructive knowledge, of this information. The quality of the job the PTO does in translating the legal presumption of knowledge into a factual reality is a measure of the office's performance. It is essential that the PTO make this information readily available and accessible to everyone.

As a reward and inducement for bringing trademerk information to the Government, the PTO grants certain substantive rights in trademarks which the owners already own. These rights are only available through the Government. Only through the registration process can a trademark owner acquire a certificate of registration. In addition to serving as proof in litigation, this certificate serves as constructive notice to everyone that the registrant owns rights in the trademark covered by the registration and that it owns these rights throughout the United States. In addition, only federally registered marks can become incontestable.

The primary function performed by the PTO in trademark matters, gathering and disseminating information, is analogous to the function it performs in patent matters and to the function the Copyright Office performs. In all three instances, Congress has decided to reward those who through disclosure, contribute to the public benefit. But it is the public disclosure of information which is primary, not the granting of rights. In all three cases, the public is benefited through the disclosure of information which is important for the functioning of our economy, because such disclosure fosters competition, promotes product quality, protects business investment, and helps prevent consumer confusion.

Now, what has the experience with the Patent and Trademark Office's automation attempts shown us? First, it has shown us that although everyone is statutorily charged with knowledge of the facts relating to registrations in the Patent and Trademark Office, the PTO seemingly has gone out of its way to limit the public's access to this information.

It has contractually obligated itself to have its information available only in Washington, DC, and only available for inspection at the PTO—I cannot help but contrast these elements of the PTO's system to what I learned this morning about the structure and access available under the Medlars system.

Further, it is proposed that the information will be available only if one is willing and able to pay a rather hefty user fee. Finally, the Office originally agreed that the method for accessing the information which was to be made available to the public would not be as sophisticated as that available to its own internal operating personnel.

Although with each passing day it becomes more realistic to think in terms of remote access for personal and other size computers located throughout the United States, the PTO has said "No" to remote access. The association believes only through expansive remote access capability can life be breathed into the concept of constructive notice, and can that concept begin to approach reality. Anything less stifles and is contrary to the concept of constructive notice.

Further, there should be no charge for access to the PTO's trademark information. Historically, the trademark records of the Patent and Trademark Office have been available free of charge to all members of the public. On this matter, let me clear up one misconception on the part of the PTO.

From my own experience, I can testify that it is not only the so-called professional searchers, who have a business of searching the Office's records, who use the PTO's records; rather, in addition to such professional searchers there are numerous businessmen, mostly small businessmen, who come to the PTO and use its records in an attempt to find a trademark which they can use in their small businesses on new and innovative products which they wish to bring to the marketplace.

If we are going to have a statutory system which assumes with conclusive finality that every member of our society knows the records of the PTO, those records must be made available to every person and the availability of those records should not be limited at all by a person's ability to pay or his ablity to travel to Washington, DC.

Now I would like to say a few words regarding the process by which the Patent and Trademark Office has attempted to automate.

It is extremely clear that the PTO enjoys a large universe of persons and organizations who are skilled in dealing with its records and with the uses that are and can be made of trademark information. In short, the PTO is fortunate to have a large cadre of individuals who were and still are ready, willing, and able to help it in its planning for automation.

Yet, regrettably, it is the association's experience that, in most instances, the Patent and Trademark Office has not asked the public to aid with any proactive participation in automation planning. Rather, the routine has been to ask interested individuals and organizations such as the United States Trademark Association to react to PTO proposals.

The time they have been given to react to complicated and lengthy proposals often has been a week or two at the most and you, like we, are well aware that once a Government organization sets its course, it is not likely to even consider altering it unless as has been the case with the PTO, there is a groundswell of near unanimous disapproval.

Mr. Chairman, I would like to conclude my remarks by summarizing that it is the view of the association that the Patent and Trademark Office too often has lost sight of the important public role which its records play in the life of commerce in the United States. Its automation efforts appear to have been calculated solely to service the way in which the Patent and Trademark Office operates internally, and not the reason why it operates. Further, the PTO automation efforts have not been participatory, even though there is a large population of persons skilled in trademark matters who would be willing to participate on a pro bono basis. In short, Mr. Chairman, the automation efforts of the PTO have been lacking, and seriously so, because they have not been of the people, by the people, and for the people.

In our written statement, we comment at greater length on these and other issues which have arisen in PTO automation of its records. The association and members stand ready to work with the PTO to assure public benefit is achieved.

We thank you for this opportunity to share the association's views and I would be pleased to answer any questions which you or any other members of the committee may have at this time or later.

[The prepared statement of Mr. Blynn follows:]

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EXECUTIVE OFFICES

ELECTRONIC COLLECTION & DISSEMINATION OF INFORMATION BY FEDERAL AGENCIES

Automation of the Trademark Operations of the U.S. Patent & Trademark Office

Statement before the
Subcommittee on Government Information, Justice and Agriculture
House Government Operations Committee

October 1, 1985

Mr. Chairman, The United States Trademark Association appreciates and thanks you for the opportunity to comment on the subject of "Electronic Collection and Dissemination of Information by Federal Agencies."

USTA was founded in 1878. It is a nonprofit organization with a worldwide membership of over 1700 corporations, law firms, professional associations and individuals interested in the protection and development of trademarks. In achieving its purpose of fostering an understanding of the value and proper use of trademarks, USTA publishes a variety of books and other publications, including The Trademark Reporter®, a bimonthly law journal that is frequently cited as the authoritative publication in the fields of trademark and unfair competition law. USTA also maintains an extensive library for use by its members and the public, operates a multi-faceted reference service, conducts frequent educational programs and meetings, and monitors and reports on legal, legislative and regulatory developments in over 150 jurisdictions around the world. Because of its standing, USTA was recognized as an official observer to the World Intellectual Property Organization in the mid-1970's.

My name is Guy M. Blynn. I serve as Executive Vice President of USTA. Like all of the Association's officers, board members and committee members, I serve on a voluntary basis. My professional background includes 15 years of practice in the areas of trademark and unfair competition law, both with a private law firm and with a publicly-held corporation.

The topic of this hearing, "Electronic Collection and Dissemination of Information by Federal Agencies," is of timely importance to USTA and its members because the U.S. Patent and Trademark Office is in the midst of a multi-faceted program to automate the federal government's trademark registration activities.

The PTO's trademark automation program has raised many questions and has provoked a great deal of controversy. At the request of Chairman Brooks, it has been reviewed by the General Accounting Office (see Report by the Comptroller General, "Patent and Trademark Offices Needs To Better Manage Automation Of Its Trademark Operations," April 19, 1985) and it has been the subject of several internal Department of Commerce studies (see particularly, "Review of Patent and Trademark Automation," July 12, 1985). Public concern and the problems these studies have revealed led the House Judiciary Committee to incorporate severe restrictions on further automation spending by the PTO in the PTO's FY 1986-88 reauthorization legislation (H.R. 2434, House Report 99-104). This legislation, which passed the House of Representatives without objection on June 24, 1985, is now pending before the Senate Judiciary Committee.

Public attention to the PTO's trademark automation program has been directed at several issues. Among them are funding and procurement practices, proposed restrictions on the public's use of the PTO's automated systems, and the PTO's intention to charge fees for public access to its public records once automation is complete. In many respects, these specific concerns are reflective of a larger issue, however: namely, how the PTO and the Commerce Department perceive the PTO's statutory mission of compiling and disseminating information about the trademark rights the federal government records, updates and maintains.

The Purpose of the Trademark Registration System

As Mrs. Justice O'Connor observed on January 8, 1985, in the majority opinion in the Park 'N Fly case, "...trademarks desirably promote competition and the maintenance of product quality..." It was in recognition of these important functions that Congress, in 1946, enacted the Lanham Act. That Act remains today the trademark law of the United States.

The controlling purpose of the PTO's trademark activities under the Lanham Act is to support the Congressional goal of providing "the greatest possible protection for trademarks." To do this, the PTO compiles, for public use and benefit, a record of rights in trademarks which qualify for federal registration. The PTO develops this record through the examination of applications for registration, and maintains the accuracy and integrity of this record by recording required affidavits of use, renewing registrations, entering information about changes in the ownership of registrations, and recording other documents relating to registration.

Everyone benefits from the public availability of the PTO's trademark records. A system friendly toward trademarks rewards those who invest in product consistency and quality in order to develop good will behind a trademark. Consumers benefit because the possibility of their confronting confusing or deceptive trademarks in the marketplace is greatly diminished. Trademark owners, whose marks appear on the PTO's record, benefit because registration carries with it constructive notice of their rights, thereby precluding others from claiming they were unaware of a prior mark when they later adopted one that conflicts. A presumption of valid and protectible ownership rights flows from the ownership of a registration. And, those members of the public considering the adoption of a mark to identify a new product or service have a central source for reviewing marks that have been adopted, and are therefore already owned, by others.

The benefits of the PTO's collection and dissemination of trademark information do not stop there, however. They carry forward from promoting an atmosphere in which businesses can make sound and productive investment decisions to reducing the burdens placed on the judicial system and to creating a smoothly operating marketplace where fair and meaningful competition can flourish. The system also offers incentives for the production of quality products and services. As a means for the public to identify the source, origin or sponsorship of any goods bearing a trademark, it aids in the placement of responsibility for products that cause injury. The existence of a trademark registration system also facilitates the export of U.S. goods and services.

The Importance of Automating the PTO's Trademark Records

For many years automation has been recognized as a way that the federal government could improve the federal trademark registration system. It could speed the registration process, provide enhanced capabilities for searching the PTO's records, increase the accuracy of these records, make its records available outside the Washington, D.C. area, and reduce the costs of administering the federal trademark statute. Regrettably, the manner in which the PTO has undertaken this project has raised serious questions in the minds of trademark owners and the public in general about whether automation in fact will provide these benefits.

While many of the PTO's experiences in pursuing trademark automation may be unique, some may nonetheless be relevant to other federal agencies considering automation.

Automation Issues

Automated System Specifications Must Reflect the Agency's Mission. Many of the problems the PTO has encountered in its trademark automation program can be attributed to the fact that, while the program put forward appears to pay great attention to the mechanics of how the registration process works in terms of internal

PTO operations, it fails to reflect on appreciation of why the process exists. In other words, the means to the end (i.e., the examination process) supplanted the end itself (i.e., public access to a record of trademark rights).

Examples of where the more limited needs of Trademark Examining Attorneys have been placed above the needs of the public for an accessible record of trademark rights are plentiful: 1) the PTO agreed to restrict the ways in which the public could search records created for the public benefit, 2) the PTO agreed to prohibit meaningful public access to its records outside the Washington, D.C. area, 3) the PTO relegated monopolistic control over its official records to commercial entities, and 4) the PTO agreed to charge the public fees for access to its records.

Without exception, these elements of the PTO's automated system are contrary to the PTO's purpose for registering trademarks.

It is significant that active -- as contrasted with reactive -- public participation in the development of the PTO's trademark automated system was virtually nonexistent. Equally important is the fact that substantive public involvement would have produced a system that met the PTO's internal needs and at the same time it met the needs of the public. Improvements in the quality, effectiveness and efficiency of the federal government's delivery of an important public service would have been assured.

Comprehensive Cost - Benefit Analyses Must Be Completed. The absence of a comprehensive cost-benefit analysis of the PTO's automated trademark system has also troubled USTA and its members. The uncertainty resulting from a lack of hard, believable cost/benefit data has made many question whether the PTO's system - especially in light of its unanticipated costs and the restrictions and limitations the PTO has placed on it - will be cost-efficient. Some have even come to suggest that the resources dedicated to automation would have been more productively used had they been directed toward improving the PTO's manual paper system. This notion is particularly noteworthy because, as the PTO's trademark activities lend themselves so readily to automation, this option never surfaced before automation began.

To date, the only direct cost-saving the PTO has identified as a consequence of automation flows from its ability to cancel its contract to print the Official Gazette. This was accomplished by bringing photocomposition capabilities in house. Yet, even this cost-saving may be illusionary if it were to be offset against the total costs of installing, maintaining and operating the new system. Moreover, photocomposition is only one element of the PTO's overall automated system and it could have been undertaken independently of other trademark automation initiatives.

The PTO's automated search system is the heart of its automation program. It is also the most expensive. However, its use to date by Trademark Examining Attorneys has not produced higher quality searches. This fact was revealed in a recent article in Chemical Week magazine, in which several members of the public were quoted as saying that the automated system produced inferior searches. Whether public searches will have equally deficient results will not be known until public use is permitted. This is not expected to happen for at least a year.

Along with the quality of the searches produced by reviewing the PTO's records, timeliness is another factor by which the system can be graded. While timeliness is generally defined as the speed with which the PTO registers trademarks, it also reflects other considerations. Among them are the time it takes for a mark submitted for registration to appear in the PTO's searchable data base. Under the paper system, the PTO has a "24-hour box" where these marks were held until they could be filed. While admittedly the 24-hour box frequently held upwards of two weeks worth of marks submitted for registration, there was nothing that systematically precluded the immediate incorporation of every mark into the search file. Ironically, under the automated system as currently structured, these marks cannot be incorporated into the search data base for weeks (the current delay is approximately 49 days).

Timeliness of the registration process itself is not expected to improve under automation either. Three years ago, the PTO established a goal for this of "3/13" - three months to the PTO rendering its first opinion on the registrability of a mark, 13 months until the registration actually issued. Interestingly, the PTO met these goals this year without the benefits of automation and has not indicated that this pendency goal will be reduced once automation is complete.

USTA recognizes that completing comprehensive cost-benefit studies for each of the PTO's automated subsystems would have delayed automation to some degree. It nonetheless submits that doing so would have produced a sounder system. It encourages Congress to consider this point as other agencies pursue automation.

The Method of Financing Automation Must be Considered. The shortcomings of the PTO's current automated trademark system in terms of its ability to meet the needs and expectations of trademark owners are more glaring because the PTO has financed its automation program to date through current-year fees paid by those using the registration process.

This policy is unfair in its expectation that current users alone should pay the capital costs of a system for automating 100 years of historical government records and for acquiring a system intended to meet the PTO's needs for the next several decades. It is also contrary to Congressional statements that these costs should appropriately be financed by General Fund revenues.

USTA's opposition to the PTO's reliance on fees to finance automation might not exist if automation was undertaken as a means of providing new or enhanced services that exclusively benefit those who use the registration system. But this is not the case. Trademark automation has been pursued simply as the means of modernizing a 100-year old paper system and of assuring that the federal trademark registration system will continue to serve the purposes for which it was created.

As such, important and fundamental features of the federal trademark registration should not change under automation. Most notably, free, unrestricted access to and searches of the PTO's public records should and must continue.

In considering how automation of any government agency should be financed, the reason why automation is undertaken should therefore be a primary consideration. Moreover, if the government is unwilling to commit the resources to implement a necessary automation program like that being pursued at the PTO, it should not presume that those who pay fees would be willing to pay either.

Caution Must be Exercised in Concluding Exchange Agreements for Components of Automated Systems. The exchange agreements the PTO concluded to translate its paper file into an electronic file have been criticized on many levels. Under these agreements the PTO agreed to provide copies of its paper records to private companies in order to receive, in return, a copy of these same records in machine-readable form. This is a task that could have been done by any number of firms that specialize in preparing electronic data bases. However, the PTO was unwilling to expend funds for this purpose; instead, it undertook to pay with something far more valuable.

Aside from questions of whether these agreements are legal because they were concluded without regard for government procurement laws and regulations, USTA believes these agreements were entered into without regard for their public policy implications, without reasonable valuation of what each side was receiving and without regard for whether other viable alternatives existed.

Governed by its determination not to expend funds for the conversion of its paper records into a machine-readable data base, commercial trademark search firms with an existing economic interest in obtaining, on an ongoing basis, copies of the records the PTO had compiled and would compile in the future, became the exclusive exchange partners available to the PTO. This self-imposed restriction placed the PTO in a poor negotiating position. Not unexpectedly, the public was the loser.

The provisions to which the PTO was forced to agree as a consequence include:

1) prohibiting public searches of the PTO's federal records outside the PTO's Crystal City offices;

2) restricting the type of access the public has to the PTO's public records;

3) imposing fees for all types of public searches of the PTO's public records;

4) precluding the PTO from selling its data base to those who might compete with the PTO's exchange partners; and,

5) providing the PTO's exchange partners with government space free of charge so they might sell their commercial searches to the public.

It is important to recall that these vendors are not providing the PTO with copies of their data bases or with proprietary information. They are simply translating paper records into electronic form. In this process, these firms provided the PTO a service which could be and was valued. In return, they received records they desired and could use to their own commercial advantage. Inexplicably, the PTO did not and has not yet independently placed a value on the records it has and is continuing to provide to these vendors.

It is unfortunate that the public policy issues posed by the PTO's exchange agreements were not fully addressed before the agreements were negotiated. It is also regrettable that the PTO believes that it is now bound by these agreements and that, if it is forced to terminate them it must either compensate its current vendors at a cost equivalent to the costs it would have incurred had it purchased conversion services outright or begin again from scratch.

Other Considerations. Mr. Chairman, the complexity and variety of issues raised by the PTO's trademark automation program makes it impossible for USTA to enumerate in a written statement at this time every one that may be relevant to the broader issues being addressed by your Subcommittee during this series of hearings. USTA, therefore, makes itself available now and in the future to answer any questions you and other members of the Committee may have.

Mr. ENGLISH. Thank you very much.
Mr. Wamsley.

STATEMENT OF HERBERT C. WAMSLEY, EXECUTIVE DIRECTOR, INTELLECTUAL PROPERTY OWNERS, INC.

Mr. WAMSLEY. Thank you, Mr. Chairman.

I am Herbert Wamsley, executive director of Intellectual Property Owners, Inc. With your permission, I would try to summarize my prepared statement rather briefly, particularly since my association is in agreement with the points that Mr. Blynn has just made.

Mr. ENGLISH. Without objection, your full written testimony will be made part of the record.

Mr. WAMSLEY. We appreciate this opportunity to present our views on the program for automating the trademark search files of the PTO. Our statement today is devoted primarily to trademark automation. I would also like to make a few brief references to the patent automation project at the PTO, because we believe the policy questions that the PTO will be confronting in the future on patent automation are very similar to those raised by trademark automation.

As Mr. Blynn has explained, an effective trademark system is important to the national economy. The trademark system encourages business investment and it protects consumers. In order for the trademark system to do its job effectively, it is important for the Federal Register of marks to be reasonably complete and readily accessible.

We think the patent system, too, is very important in stimulating investment and innovation. Dissemination of patent information to the public is an important aspect of that.

IPO supports automation of the trademark files. Our members share many of the concerns raised in the April 1985 report by the General Accounting Office. We are pleased to hear Mr. Quigg say this morning that there will be earlier consultation with the private sector in the future.

IPO believes the capital outlays for automating the trademark and patent search files should be supported entirely by public funds. We believe taxpayer money is warranted because automating the search files will confer long-term benefits on the general public.

In the case of the trademark file, automation will improve reliability of trademark protection and ease of access to the files, thereby strengthening incentives for investment by U.S. businesses and protecting consumers from confusion and deception.

Moreover, we believe it is inequitable to charge current trademark applicants for major capital outlays for automation, because automation will benefit future applicants and will benefit the users of the trademark files who do not apply to register marks.

We strongly favor H.R. 2434, the Patent and Trademark Office authorization bill, which has been passed by the House of Representatives and is now pending in the Senate Judiciary Committee. That bill prohibits charging user fees for the patent and trademark search libraries located in Arlington, VA, and it also prohibits using user fee money for procuring automatic data processing resources at the PTO.

The House Committee Report on H.R. 2434, rather, does not agree with the interpretation of Public Law 97-247 that Mr. Huther expressed earlier this morning concerning the authority of the Patent and Trademark Office to charge trademark applicants for the capital outlays for trademark automation.

We oppose the exchange agreements the PTO entered into, and we are, of course, pleased to hear that those agreements are going to be terminated.

Finally, there has been a lot of discussion on the question of whether the Patent and Trademark Office should be competing with private companies in offering automated services to the public. We think the question here is not whether the PTO is competing with the private companies. The question is what is a proper governmental function?

If it is a proper governmental function to provide certain records to the public, the PTO should do it. Otherwise they should let private sector companies do it because they can probably do it more efficiently.

In the case of the patent and trademark records, we think there is a basic governmental function of maintaining and making available to the public the basic information in the patent documents and the trademark registration documents and the Government must keep control of that.

We believe it would be out of the question to require the public to have to rely on a private company as the ultimate authority on what information is contained in the official Government records of trademark registrations.

As Mr. Quigg noted, the office is planning to abolish the paper files, so the automated system will be the only source of information about the scope of the legal rights in trademark registrations. The precise wording of the documents in the trademark search files often is critical in determining the scope of legal rights.

Members of the public must rely on the content of those documents in determining whether they can make investments safely. We believe the PTO always must be the one to maintain and make available to the public the basic information contained in those documents, and we don't think that means the PTO is going to become the only source of machine readable information about patents and trademarks. There will still be many specialized services that will be provided by the private companies.

We thank you for this opportunity to present our views.

[The prepared statement of Mr. Wamsley follows:]

STATEMENT ON BEHALF OF INTELLECTUAL PROPERTY OWNERS, INC.

by Herbert C. Wamsley, Executive Director

I am appearing here today on behalf of Intellectual Property Owners, Inc. (IPO). We appreciate this opportunity to present IPO's views on the program for automating the trademark search files at the Patent and Trademark Office.

IPO is a nonprofit association whose members own patents, trademarks, and copyrights. Our members are responsible for a significant portion of the research and development and brand-name advertising in the United States, and they pay a significant portion of the fees which are collected by the Patent and Trademark Office. IPO is interested in having the Office operate as effectively as possible, to provide maximum incentives for investment and innovation.

At the outset we want to stress that the Patent and Trademark Office has a dedicated and capable staff of employees who have worked diligently over the years to improve the Office's operations. We are grateful for their efforts. They have accomplished a great deal while often working with inadequate resources.

We also want to emphasize that we are in favor of automating the Office's search files. We believe automation eventually will allow more effective dissemination of patent and trademark records and will help provide greater certainty about the validity of legal rights in the patents and trademark registrations issued by the Office.

BENEFITS FROM DISSEMINATING TRADEMARK INFORMATION

Our statement today is devoted primarily to the trademark automation project. We will also make a few references to patents and the patent automation project, since the policy questions that will have to be confronted in the future in automating the patent search file are similar to questions that have been raised in connection with trademark automation.

An effective trademark system is one of the keys to maintaining this country's industrial competitiveness. The objectives of the Federal trademark act, known as the Lanham Act, are to protect the consuming public and to protect investments of trademark owners. The 1946 Senate Committee Report on the Lanham Act put it as follows:

> The purpose underlying any trade-mark statute is twofold. One is to protect the public so that it may be confident that, in purchasing a product bearing a particular trade-mark which it favorably knows, it will get the product it asks for and wants to get. Secondly, where the owner of a trade-mark has spent energy, time and money in presenting to the public the product, he is protected in his investment from its misappropriation by pirates and cheats.... Your committee believes the proposed bill accomplishes these two broad basic principles.

For the Lanham Act to achieve its objective of protecting the consuming public, the Federal register of marks must be accessible. Competitors and other interested members of the public must have easy access to the register so they can learn what marks are registered and avoid inadvertently adopting marks that would cause a likelihood of confusion because of a mark already registered. Also, trademark owners must have adequate incentives to register their marks so that the register of marks will be reasonably complete.

It is important to understand that trademark owners have legal rights which they can enforce in court without registering their marks under the Lanham Act. If registration becomes too expensive, trademark owners will not bother to register.

A large number of the searches that are conducted in the public search room at the Patent and Trademark Office in Arlington, Virginia result in marks not being adopted, because a conflict is found to exist with marks already registered. The general public benefits from having businesses not adopt marks which later will cause confusion of consumers.

By making it easier to check for conflicts when adopting new marks, the Lanham Act facilitates investment in new products which bear new marks. Thus, the Federal trademark system as well as the patent system contributes to a climate conducive to innovation.

Piracy and counterfeiting of U.S.-owned intellectual property, including trademarks, is now of epidemic proportions. The U.S. International Trade Commission estimated in 1982 that American businesses it studied were losing over $5 billion a year, and since then the problem has gotten worse.

In response, Congress last year enacted the Trademark Counterfeiting Act of 1984, making trademark counterfeiting by use of a Federally registered mark a Federal crime. The Lanham Act always has put everyone on notice of the existence of Federally registered marks by operation of law. Now, under the Counterfeiting Act, trademark records also can govern whether citizens might be subject to fine or imprisonment.

The patent system too is very important in stimulating innovation and investment in the United States. One way the patent system promotes innovation is by disseminating information that would be held as trade secrets if patent protection were not available. Studies have shown over 80 percent of the technology described in printed patent documents is published nowhere else. The public patent search room in Arlington is one of the world's largest collections of technical literature. It is a great teaching library. It is used daily by scientists, engineers, inventors, and business people for a variety of purposes.

NEED FOR AUTOMATION

IPO supports automating the Office's trademark files. We believe that in the long run automating the search files will improve the quality and reliability of trademark registrations issued by the Office, and will help alleviate piracy and counterfeiting problems.

This Subcommittee is aware that the trademark automation program has generated controversy. The April 1985 report by the General Accounting Office entitled "Patent and Trademark Office Needs to Better Manage Automation of its Trademark Operations" expressed a number of concerns which are shared by the users of the Patent and Trademark Office.

GAO found that in attempting to automate its trademark operations, the Patent and Trademark Office did not (1) thoroughly analyze user needs, (2) adequately assess the cost-effectiveness of its systems, (3) properly manage three exchange agreement contracts, or (4) fully test one of its systems before accepting it from the contractor. GAO reported that although the Patent and Trademark Office had addressed several of these problems, it still needed to do more.

We believe the Office should have analyzed the needs of users other than the Office's trademark examiners sooner and more thoroughly. We also have the impression that the cost-effectiveness studies performed by the Office were inadequate, even though automation probably will prove to be justified on the basis of improved quality of search results after the system has been thoroughly tested and refined. Trademark automation cannot be justified on the basis of cost savings for the Office any time soon. Studies have shown that the Office's trademark examining attorneys need only around 16 minutes per search when they conduct searches in the Office's paper file. Annual costs for maintaining the paper file also are small. Consequently, conventional paper-file searching is quite inexpensive.

The situation is different for the patent search file, where much longer time is required to conduct searches and the expenses are very high for maintaining the massive collection of 25 million patent documents in paper form.

FINANCING OF AUTOMATION; COSTS TO USERS

IPO believes the capital outlays for automating the trademark and patent search files should be supported entirely with public funds. Taxpayer money is warranted because automating the search file will confer long-term benefits on the general public. In the case of the trademark file, automation will improve the reliability of trademark protection and the ease of access to the file, thereby strengthening the incentives for investment by U.S. businesses and protecting consumers from confusion and deception.

Similarly, automation of the patent search file will benefit the public at large by promoting dissemination of technological information, thereby contributing to the long-term strengthening of technological progress in this country.

Moreover, it is inequitable to charge current trademark applicants for major capital outlays for automation, because automation will benefit future applicants and it will benefit the users of the trademark file who do not apply to register marks.

Still another reason for using public funds for automation is to permit Congressional control over the nature and magnitude of the Office's automation expenditures. The annual appropriations act does not limit spending of user fee income in the same way it limits public funds. A project as large and complex as the Patent and Trademark Office automation program, which will involve expenditures of over $45 million for patent and trademark automation in 1986 and an estimated $720 million over a 20 year period, should be subject to the Congressional authorization and appropriations processes.

H.R. 2434, the Patent and Trademark Office authorization bill for 1986 to 1988 which has passed the House, prohibits charging user fees for the patent and trademark search rooms in Arlington, Virginia. We agree with that bill. We are opposed to any kind of user fees for supporting the search room costs.

The patent and trademark search rooms are used by hundreds of individuals each day, for many kinds of searches. The trademark search room is used by individuals and businesses who are considering adopting marks, and by competitors who wish to avoid charges of infringement or counterfeiting.

The Office has proposed fees of at least $40 an hour for access to the automated trademark system in the trademark search room. We believe the Office is taking automation of the search file as an excuse to charge the public for access to information in the trademark search room that has been available to the public free of charge since the beginning of the Federal trademark system in 1870.

We see little difference between charging the public to use the patent and trademark search rooms and charging the public to use the Library of Congress. At this time when America's economic and technological leadership is being challenged it is the wrong time to begin taxing the users of Federal libraries which disseminate information useful to innovators and investors.

Charging fees for access to the trademark search room is contrary to the clear intent of Congress as expressed in the legislative history of P.L. 96-517 and 97-247, enacted in 1980 and 1982 respectively.

The House Judiciary Committee on the 1980 law stated:

> The Committee...supports the premise that patent applicants and those seeking to register trademarks should bear a significant share of the cost of operating the PTO by the payment of fees. However, the committee has made certain amendments to the formula which empowers the Commissioner to set these fees. Certain costs of operating the PTO confer no direct benefit on applicants but rather go to meet the responsibility of the Federal Government to have a PTO in order to execute the law. For example, the cost of the Office of the Commissioner and certain agency offices involved with public information, legislation, international affairs and technology assessment. Maintaining a public search room confers a general public benefit, as does the maintenance of the patent files in depository libraries. The contribution to the World Intellectual Property

> Organization relative to the Patent Cooperation Treaty is a treaty obligation. These costs should be paid for entirely from appropriated funds. (Emphasis added.)

The Congressional policy of supporting the search room entirely through appropriations was carried over into the 1982 law as well. During testimony in 1982, the then Commissioner of Patents and Trademarks referred to "the amount of the Office which is nonrecoverable, my salary, the public search room and so on...."

For purposes of interpreting the law it should not matter whether the records in the search room are in paper form or in automated form -- the policy issues are the same. What is at issue is whether the Office is obliged to make trademark records -- and later patent records -- available to the public without charge.

RESTRICTIONS ON USE OF INFORMATION

The April 1985 Report by the General Accounting Office explains that the Patent and Trademark Office entered three exchange agreements with private companies which contained restrictions on the PTO's freedom to offer information on trademarks to the public. Two of the companies later merged.

We oppose exchange agreements between the Patent and Trademark Office and private companies which restrict access by the public to Patent and Trademark Office records. Such agreements amount to giving private companies monopoly rights in the dissemination of public information. It is unwise for the government to enter such contracts, whether or not competitive bidding is used.

Another problem with exchange agreements with private companies is that they are not subject to the Congressional authorization and appropriations process. They are "off budget" expenditures by the Patent and Trademark Office which are not subject to normal review. When government programs involve major expenditures and difficult questions of public policy, such exchange agreements are not an appropriate vehicle for funding them.

PROPER ROLE FOR PRIVATE COMPANIES

The Patent and Trademark Office always has been the keeper of the official records of U.S. patents and trademark registrations. This is a basic governmental function which cannot be turned over to private companies. It would be unthinkable for members of the public to have to rely on a private company as the ultimate authority on what information is contained in official government records of trademark registrations.

It is important to remember that the Office is planning to abolish the paper trademark files as soon as the automated system is proven. The automated system will be the only source of information available from the office about the scope of legal rights in trademark registrations. This information must be maintained under government control.

The Patent and Trademark Office does not merely publish trademark information submitted by applicants. The Office has a staff of over 100 professional trademark examining attorneys who conduct legal proceedings to determine whether marks are registerable. The papers submitted by trademark applicants usually are amended through correspondence between the examining attorney and the applicant before the office publishes a trademark registration document. The precise wording of the documents often is critical in determining the scope of legal rights. Members of the public rely on the content of trademark registration documents after they are published to determine whether they may invest with safety.

If one accepted that the Patent and Trademark Office's automated system will be competing with private search firms, it would follow that the Patent and Trademark Office has been competing with the private sector for nearly 200 years in operating search libraries containing paper documents. Operating the search room is a governmental function which cannot be performed by the private sector.

This certainly does not mean that the PTO will become the dominant source of machine readable trademark information services in the U.S. The private companies which for years have been providing machine readable trademark information to the public apparently are thriving businesses. They provide many kinds of services in addition to those that will be available from the PTO automated trademark system, including searches of state and common law trademarks.

In summary, we believe the Patent and Trademark Office always must maintain and make available to the public the basic information in official records of U.S. patents and trademark registrations, whether the records are in paper or electronic form.

* * *

Thank you for this opportunity to appear before the Subcommittee.

Mr. **English.** Thank you very much, Mr. Wamsley.

Mr. Wamsley, the GAO found the PTO did not thoroughly analyze user needs before making its automation plans and I think that that was also Mr. Blynn's statement, you hit that pretty good in your statement.

Did PTO consult with interested outside organizations in order to determine if the automated system would meet their needs, Mr. Wamsley?

Mr. **Wamsley.** Well——

Mr. **English.** As far as you know?

Mr. **Wamsley.** We feel the consultation was grossly inadequate. The office did make some attempt by holding a hearing, I believe, at the time they developed their master plan in 1982, but there really was very little opportunity for the private sector to get into it and present its views. As Mr. Blynn said, I think the situation has been largely that the private sector has only had the opportunity to react after the PTO has formulated its master automation plan.

Mr. **English.** Mr. Blynn, it appears that one of the objectives of PTO was to avoid competing with existing trademark search firms. Do you think that the availability of search services from the PTO would inhibit competition?

Mr. **Blynn.** No; I don't. I have heard a lot of discussion and a lot of claims that the availability of the PTO's trademark records in machine-readable form would compete unfairly with private search firms. USTA does not share this concern. First of all, most private search firms bring with them their own logic to approaching the base of data and the PTO will either have a different logic or no logic at all. It will simply make the information contained in its records available but they will not give tremendous guidance as to how to get it out. Conversely, the search firms get it out and they are expert in doing it.

Second, search firms search other data bases which are not available at the PTO. They search data bases of all State trademark registrations, they search numerous trade directories and business lists. Consequently, I don't think there would be the type of competition that would in any way adversely affect private search firms.

Indeed, the information that we are talking about making available at no charge at the Patent and Trademark Office has always been available at no charge, and private search firms have flourished in that environment. In sum, we have heard the argument but we don't believe it is a valid one.

Mr. **English.** Mr. Wamsley, do you have an opinion on that?

Mr. **Wamsley.** I agree with what Mr. Blynn says, Mr. Chairman. The office has been operating the search rooms in paper form for nearly 200 years in the case of patents and 100 years in the case of trademarks. If you took this argument about competing with the private sector to its logical conclusion, it would seem that the past operation of those search rooms with paper records would have also been in competition with the private sector. I think that it is a proper governmental function to operate the search rooms.

Mr. **English.** Mr. Wamsley, suppose PTO decides to continue the public access to its paper records, and to charge reasonable user fees for use of an automated search system. Is that acceptable or are your members willing to pay fees in order to use PTO-provided automated equipment?

Mr. **Wamsley**. Well, we feel that there is a general public benefit from having the search rooms and that there should be no charge at least for public access to the facility located in Arlington, VA.

Now, if the office is envisioning at some future time that this information would be available on-line, available in the offices of the attorneys around the country, that is a different question.

On that point, there would be a better argument that there is a new and different type of enhanced service available for which a charge could be imposed.

Mr. **English**. Mr. Blynn.

Mr. **Blynn**. Mr. Chairman, I thought I understood your question to propose the hypothetical that there be both a paper search record and an automated search record.

Mr. **English**. Yes.

Mr. **Blynn**. You are asking whether it would be an acceptable accommodation to provide free access to a paper search record, and to charge for use of the automated system.

That is an interesting concept and one I have not heard discussed at length by our membership before. Nonetheless, I don't know that is really a choice. One of the reasons is that automation of the PTO is something that was "user-driven." That is, trademark owners and other users of the search room found that the search rooms' paper records were not reliable in many instances. It was felt that improvements had to be made and that automation offered the means.

Therefore, a choice to go back to a paper system that was not really working well, I don't know if there would be a great deal of support. It poses a number of issues. First of all, does it make sense for the government to keep records in two formats?

Second, I think most users would have great doubts about whether the paper records would be as good as the machine-readable record. It is far easier to keep the integrity of a machine-readable record at a very high level as opposed to a paper record which is constantly shuffled around. Papers are removed, and the possibility of their being lost or damaged is high. Thus, I don't know that that is really a solution. It may have some appeal, but I don't believe it is a solution to the problem.

Mr. **Wamsley**. I agree with Mr. Blynn on that point, Mr. Chairman.

Mr. **English**. Well, thank you both, Mr. Wamsley and Mr. Blynn. We appreciate your testimony and we may have additional written questions for you as well, and we would appreciate a timely response.

Again, thank you.

That concludes our hearing today. We will recess subject to the call of the Chair.

Thank you.

[Whereupon, at 11:30 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIXES

APPENDIX 1.—ADDITIONAL INFORMATION SUBMITTED BY THE SECURITIES AND EXCHANGE COMMISSION

A. LETTER FROM CHAIRMAN JOHN S.R. SHAD TO CHAIRMAN GLENN ENGLISH DATED JULY 25, 1985, TRANSMITTING REPLIES TO QUESTIONS FROM CHAIRMAN ENGLISH AND REPRESENTATIVE THOMAS N. KINDNESS

OFFICE OF
THE CHAIRMAN

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

July 25, 1985

The Honorable Glenn English
Chairman
Subcommittee on Government
  Information, Justice & Agriculture
B349-C Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman English:

The attached materials respond to your letter of May 15, 1985 and to your question during the hearing of April 29, 1985 as to the hardware and software to be provided under the operational Edgar contract.

If you have any further questions, please contact Kenneth Fogash, Deputy Executive Director (272-2142).

Sincerely,

John S.R. Shad

Attachment

RESPONSES TO CHAIRMAN ENGLISH AND CONGRESSMAN KINDNESS EDGAR QUESTIONS

The responses to the following questions of Chairman English and Congressman Kindness are based on information in the recently released Pre-Solicitation Document for the operational Edgar system. This document seeks comment regarding the proposed system from potential bidders, persons who make filings with the Commission and potential users of the system. The comments will be considered in preparing a Request for Proposals to be released in the fall of 1985. Thus, the responses set forth below are subject to change.

June 7, 1985

MEMORANDUM

TO: Chairman Shad

FROM: K.A. Fogash

SUBJECT: Chairman English and Congressman Kindness Edgar Questions

Attached are the responses to Chairman English's 13 questions and Congressman Kindness' nine questions.

Attachments

SEC STAFF RESPONSE TO
QUESTION OF CHAIRMAN ENGLISH,
Hearing of April 29, 1985

QUESTION 1. Please provide a detailed breakdown of the contractor's estimated costs for the life of the operational Edgar contract.

ANSWER. The SEC estimates that, over a seven-year period, it will cost a contractor $63.2 million to develop and operate the Edgar system. A breakout of this estimate follows.

Estimated Operational System Costs
($ - 1,000's)

	FY87	FY88	FY89	FY90	FY91	FY92	FY93
Staff							
Software Dev.	$980	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400
System Engineering	600	600	600	600	600	600	600
Communications	150	360	210	210	210	210	210
Installation	300	100					
Subtotal	$2,030	$3,460	$3,210	$3,210	$3,210	$3,210	$3,210
Hardware (Purchase)							
Mainframe	7,000	4,000					
Micros	2,500	2,500					
Site Prep.	2,500	2,500					
Regional	4,400	4,400					
Subtotal	16,400	13,400	-0-	-0-	-0-	-0-	-0-
Facilities Mgmt.	—	1,440	1,440	1,440	1,440	1,440	1,440
Communications	250	500	500	500	500	500	500
Total	$18,680	$18,800	$5,150	$5,150	$5,150	$5,150	$5,150

Total All Years: $63,230

SEC STAFF RESPONSE TO
QUESTION OF CHAIRMAN ENGLISH,
Hearing of April 29, 1985

QUESTION 2. Please describe the criteria that will be used to select the contractor for the operational EDGAR contract?

ANSWER. The RFP responses will be submitted in four parts - technical, management, business and cost proposals. The cost proposal will be evaluated separately for an indication of the offerors financial stability, solvency and the value to the government. The remaining three parts will be scored against criteria directly related to the requirements in the RFP. Although the RFP will not be issued until this fall and will be revised following public review and comment on a the pre-solicitation document, we anticipate factors similar to the following:

A. Technical Proposal Evaluation Factors

1. Adequacy of System Architecture
    - Receipt and Dissemination System
    - Internal Processing System
    - Office Automation System (headquarters and regional offices)
2. Adequacy of Proposed Capacity and Performance
3. Adequacy of Proposed Software
4. Adequacy of Transitions Planning (Technical Approach)
5. Adequacy of Proposed Facilitites Management Support

B. Management Proposal Evaluation Factors

1. Adequacy of Staffing: Expertise and Number
2. Corporate Qualifications in Performing Similar Work
3. Quality of the Project Management Approach
4. Adequacy of Proposed Schedule
5. Adequacy of Other Service and Support Plans
    - Back-up and recovery
    - Training plan
    - Software and hardware installation and testing
    - Transition planning (front end and back end)
    - Security plan

C. Business Proposal Evaluation Factors

1. Adequacy of Market Research (Wholesale Only)
2. Adequacy and Realism of Revenue Projections (Wholesale Only)
3. Adequacy of Proposed Pricing Scheme (Wholesale Only)
4. Adequacy of Retail Sales Plan (If Applicable)

SEC STAFF RESPONSE TO
QUESTION OF CHAIRMAN ENGLISH,
Hearing of April 29, 1985

QUESTION 3. The EDGAR contractor will be expected to make a large investment and to provide services for free to the SEC. Please describe what the contractor will be receiving from the SEC in exchange.

ANSWER. The principal benefit to be given the contractor is the exclusive right to wholesale the SEC filing database. The contractor will also be allowed to compete in the retail, value-added market.

SEC STAFF RESPONSE TO QUESTION OF CHAIRMAN ENGLISH,

Hearing of April 29, 1985

QUESTION 4. Please describe the procedures by which EDGAR information will be sold at the wholesale level.

a. How will the pricing of information at the wholesale level be regulated? Will prices at the wholesale level be fixed price or based on usage?

ANSWER. Wholesale service will entail direct, automatic transmission of all public filings as soon as technically possible after filing acceptance by Commission personnel. This wholesale service will be available to any organization on an annual subscription basis at a fixed price proposed by the contractor and subject to Commission approval.

In their proposals, offerors will be required to propose annual subscription prices for wholesale service for each year of the contract. In addition to this proposed price, the offeror will be required to describe the basis for this subscription price in terms of both the costs of system development and operation and the offeror's own market projections of public demand. Offers will be evaluated on both the prices proposed and the justification of the price.

During the life of the contract this wholesale subscription price will be subject to review by the Commission and may be revised up or down to accommodate changed operating costs, based upon independently audited figures or market demand.

QUESTION 4b. How will the SEC or the contractor distinguish between a wholesale and a retail customer?

ANSWER. Because the wholesale category pertains to a class of service rather than a class of customer, no distinction based upon user is necessary.

Any entity or individual may purchase wholesale service for any purpose.

QUESTION 4c. Will wholesale purchasers of Edgar information be able to rewholesale the data to others without restriction?

ANSWER. Yes. There will be no restrictions on use or retransmission of data by wholesale purchasers.

QUESTION 4d. Will retail customers be able to resell Edgar information to others without restriction?

ANSWER. Yes. The Commission intends to strongly encourage full competition among entities offering retail service. To assist this, the Commission will not attempt to regulate retail service.

SEC STAFF RESPONSE TO
QUESTION OF CHAIRMAN ENGLISH,
Hearing of April 29, 1985

QUESTION 5. Have any companies that agreed to participate in the pilot system subsequently withdrawn from the test? If so, please identify each company and the reasons for withdrawing. Have any pilot participants expressed dissatisfaction with the system? If so, please describe the nature of the dissatisfaction.

ANSWER. Since September 24, 1984, when Edgar received its first electronic filings, 22 companies have withdrawn from the project and 28 additional companies have joined. The names of these companies are set forth below:

WITHDRAWALS:

1. Bank South Corp.
2. Com Tel Inc.
3. Development Corp. of Amer.
4. Dominion Resources Inc.
5. First Boston, Inc.
6. Geo International Corp.
7. Hazeltine Corp.
8. Hospital Corp. of America
9. Magnetic Controls Corp.
10. Manville Corporation
11. Micom Systems Inc.
12. Nisus Video Inc.
13. Pitney Bowes, Inc.
14. Prime Computer Inc.
15. Prodigy Systems Inc.
16. Rexon Inc.
17. San Diego Gas & Elec.
18. Temp-Stik Corp.
19. United Industrial Co.
20. US West Inc.
21. Virginia Electric
22. Williams Industries

Seventeen of the above Registrants withdrew from the pilot prior to submitting any electronic filings. The reason most often given by these Registrants was that they were not yet prepared to file electronically. Two other Registrants made test filings but decided to delay active participation until a later date. The remaining three Registrants (Rexon, Bank South and San Diego Gas & Electric) withdrew after having completed transmissions of live filings. Rexon left the project when it was acquired by a privately held company which had no continuing SEC reporting obligation. Bank South indicated that most of its filings were prepared by outside parties, and that its attempts to convert the information into the Edgar format were too difficult, time consuming and costly to continue. San Diego Gas & Electronic withdrew from the pilot because they believed the risks and costs associated with electronic filing outweighed any potential benefits. In this connection, the company submitted a filing on diskette which was incorrectly read into the Edgar system. While the error was corrected, the company also was concerned about the additional time and personnel it took them to prepare the electronic document and proofread the printout of the filed document.

NEW REGISTRANTS:

1. AT&T Credit Corp.
2. August Pension Investors
3. Centel Corporation
4. Checkpoint Systems Inc.
5. Colorado Ute Electric Assn Inc.
6. Dyco Oil & Gas
7. Eastman Kodak Int'l Cap.
8. First Citizens Bankshare
9 Gandalf Tech Inc.
10. Kaiser Alum & Chem Int'l
11. Key Banks Inc.
12. Marco Inc.
13. Mobil Alaska Pipeline
14. Mobil Corp.
15. Mobil Oil Corp.
16. Montgomery Ward Cred.
17. Montgomery Ward
Norton Company
18. Scana Corp.
19. SCM Corp.
20. Seahawk Oil Int'l Inc.
21. South Central Bell
22. Southern Bell
23. Southwestern Bell Telephone
24. TGI Friday's Inc.
25. U.S. West, Inc.
26. Wash. Natural Gas
27. Wisconsin Electric
28. Wisconsin Natural Gas

The pilot participants, for the most part, have not expressed dissatisfaction with the Edgar system, but rather have made constructive suggestions on ways in which the system could be improved. We have, to a large extent, made changes in the system and adjusted our procedures to accommodate these suggestions. For example, the requirements for sequential numbering and page-for-page match between filed and distributed documents were eased and the requirements for noting revised material were changed. In addition, procedures were instituted to have the system identify all errors, if any, in a test submission at one time to assure the filer that once testing is completed, the live filing will be accepted by the system.

SEC STAFF RESPONSE TO
QUESTION OF CHAIRMAN ENGLISH,
Hearing of April 29, 1985

QUESTION 6. At the hearing, you referred to a $2 billion market for financial information. What is the source of this information? Please provide more detailed information on the size of this market and on the type of services and products that are included.

ANSWER. In April of 1984, the SEC awarded a contract to Mathematica Policy Research, Inc. to study the market demand and user benefits associated with Edgar. A final report was submitted to the Commission on June 12, 1984. The reference to a potential "$2 billion market" is derived from that study.

Based on a national survey of investors, Mathematica determined that potential revenues from the sale and resale of Edgar-derived services would be maximized at moderate price levels. The study also indicated that the size of the potential market for the full range of these services (eg. basic filings, analyses, data extractions) could exceed $2 billion annually. It is important to underscore that this projection was of a potential market, and reflects direct sales by the contractor as well as resales by secondary securities information vendors.

SEC STAFF RESPONSE TO

QUESTION OF CHAIRMAN ENGLISH,

Hearing of April 29, 1985

QUESTION 7. One of the most important features of Edgar is its ability to provide immediate access to new filings. What percentage of the investing community now demands immediate access to SEC information? If possible, please respond by identifying that portion of the $2 billion market for information services that now services this demand.

ANSWER. Because Edgar itself is predicated on the fact that there is currently no immediate access to SEC information, there is no precise estimate of the percentage of the investing public that now requires such a service.

An indication of where the demand for SEC information lies can be found in the Mathematica study referenced in Question 6. The study estimated that 39% of all individual investors, 60% of securities firms, 93% of institutional investors, and 100% of securities attorneys had used or intended to use SEC information. Among these groups, 50% of the securities firms, 74% of the institutional investors and 80% of the securities attorneys indicated an interest in subscribing to Edgar.

SEC STAFF RESPONSE TO
QUESTION OF CHAIRMAN ENGLISH,
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QUESTION 8. Mr. Fogash testified that of the estimated $50 million cost of Edgar, roughly $22.5 million "would be associated with SEC internal processing." He also stated that $9 million would have already been spent. Please provide a more detailed explanation of these numbers. What is covered by the $22.5 million figure? Is the $9 million included in the $22.5 million?

ANSWER. The estimated 5 year cost for the Edgar operational system is $50 million. Of this, the cost for SEC internal processing is estimated to be $22.5 million, of which $9.0 million will be provided by the pilot hardware and software.

Internal SEC costs break down as follows:

- $1.5 million annually for contractor staff = $ 7.5 (5 yr.)
- $6.0 million for hardware/software = $ 6.0 (5 yr.)
- $9.0 million contribution from pilot = $ 9.0 (5 yr.)

$22.5

SEC STAFF RESPONSE TO
QUESTION OF CHAIRMAN ENGLISH,
Hearing of April 29, 1985

QUESTION 9. The Information Industry Association recommended that the Edgar contract be broken up into several parts that could be awarded separately. One contract would be for a "data processing facilities management contract" and a second part would be for an external dissemination subsystem. What are the advantages and disadvantages of the IIA approach?

ANSWER. The advantage of a contract for "data processing facilities management" and a second contract for external dissemination would be the separate procurement of the SEC internal processing system from the external dissemination of filings system. The disadvantages of this approach greatly outweigh the advantages. The Edgar operational system requires an integrated solution. In this regard, the processing of electronic filings is integrally related not only to their receipt but also to their internal processing by the SEC and their public dissemination. The separation of the receipt and SEC internal processing system from the public dissemination system would destroy the ability to respond to the integration requirements. In addition, the cost of a separate telecommunications system to handle receipt of filings, as opposed to sharing with the dissemination system, could almost double the cost of the operational Edgar system and would increase security risks by combining receipt, which requires dial up access, with internal SEC processing.

SEC STAFF RESPONSE TO
QUESTION OF CHAIRMAN ENGLISH,
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QUESTION 10. Please describe plans for the backup system that will handle the operations of EDGAR in the event of a breakdown or sabotage.

ANSWER. We currently anticipate that three different levels of backup will be required. The levels are:

Level I - System expected to be down from 4-8 hours. The Contractor must provide a backup facility for continuing to receive, accept, and make filings publicly available. The other Edgar functions will not be performed under this scenario.

Level II - System expected to be down from 8-24 hours. The Contractor must provide a backup to continue receiving filings and allow SEC employees to perform bacic processing functions.

Level III - System expected to be down more than 24 hours. The Contractor must provide a complete backup facility that will allow for all Edgar functions to be performed until the primary facility is back in operation.

QUESTION 10a. Does the SEC plan to maintain a backup system capable of receiving and processing paper filings?

ANSWER. The SEC will not maintain a backup system per se for processing paper filings. The functional organization of Edgar will allow for the receipt and processing of filings in a paper mode only in the event of an extreme emergency not presently forseen.

QUESTION 10b. Will the backup system have the capability to support all of EDGAR functions? Will there be any loss of ability to access, process, or disseminate the full range of data in EDGAR while the backup system is operational?

ANSWER. As explained above, for the day of a system outage, the Edgar functions that could be performed would be diminished. However, after a day, full capability would be restored.

QUESTION 10c. How long will it take for a backup to EDGAR to become operational in the event that the main system fails?

ANSWER. After four hours, Level I backup, as explained above, would be implemented.

QUESTION 10d. How long will the backup system be capable of operating?

ANSWER. Indefinitely.

SEC STAFF RESPONSE TO
QUESTION OF CHAIRMAN ENGLISH,
Hearing of April 29, 1985

QUESTION 11. As a result of Edgar, companies that issue securities will receive faster service from the SEC and wider access to capital markets. The SEC itself will also receive free services. Yet neither of these beneficiaries of Edgar will be paying any of the costs. Please explain the reasons for this decision.

ANSWER. The Commission and issuers of securities will be paying some of the costs of the operational system. The Edgar contract will be a cost-sharing contract, a type of contract established by the Federal Acquisition Regulation as appropriate to split the costs of a project between the government and the contractor, where the contractor expects the contract to provide a valuable commercial product. The Commission will be contributing to the cost of the contract the Pilot hardware and software which were paid for with appropriated funds. The value of these is approximately $9 million. The staff is considering whether, in addition, the Commission should contribute additional funds to the cost of the system.

Statutory filing fees paid by issuers of securities and others in fiscal year 1984 amounted to nearly $121 million which is 129% of the Commission's appropriation of $94 million. Fees for registration of securities under the Securities Act of 1933 amounted to 53% of the total fees. These fees are paid into the Treasury and are not retained by the Commission. Thus, filers indirectly are already making a significant contribution through existing fees.

SEC STAFF RESPONSE TO
QUESTION OF CHAIRMAN ENGLISH,
Hearing of April 29, 1985

QUESTION 12. In response to Chairman English's question about contractor requirements, please provide the following data:

a. What are the SEC's internal processing requirements for EDGAR? Please describe the software, hardware, and facilities management requirements.

ANSWER. The SEC's internal processing requirements are for a computer system that will store all filings submitted, make those filings available electronically to internal analysts for review and maintain a data base of filings that have been processed.

The SEC has no specific hardware in mind. However, in general it must have the following characteristics.

1. There will be two separate mainframes - one for receipt processing and one for internal processing.
2. The capability of storing approximately 68 gigabytes of data on-line.
3. The capability of processing magnetic tapes.
4. The capability of doing high speed printing.
5. The capability of accepting a variety of different communications protocols.
6. The capability of directly supporting approximately 500 workstations.

Although some of the software will be custom developed, most of it will be generic off the shelf packages. These will include:

1. A data base management system.
2. A text searching and retrieval package.
3. A security package.
4. A job accounting package.
5. A performance monitoring package.
6. An internal and external mail package.
7. Data encryption software.

The facilities management requirements are for the contractor to operate and maintain the internal processing system seven days a week for approximately 14 hours per day. The number and kinds of staff required for this will be left up to the contractor.

QUESTION 12b. At how many locations in Washington and elsewhere will the contractor be required to provide EDGAR terminals:

ANSWER. In addition to the headquarters in Washington, the contractor will be required to provide EDGAR terminals in the SEC's Public Reference Rooms in New York and Chicago. It will also be necessary that terminals be provided to nine regional and five branch offices as indicated below.

Regions: Seattle, Los Angeles, Fort Worth, Denver, Chicago, New York, Boston, Washington, and Atlanta

Branches: Philadelphia, Salt Lake, San Francisco, Houston, and Miami

QUESTION 12c. What types of communications support will be needed to maintain the system and connect all SEC locations to EDGAR? Will the SEC require private lines for internal communications?

ANSWER. The SEC's requirement for communications with remote locations is that a high speed, high quality line be used. It will be left up to offerors to propose what kind of communications link they think will best satisfy this requirement. The only other support required will be the communications software that will presumably be purchased off the shelf.

The SEC will not require private lines for internal communications. The internal communications will be handled either through some kind of Local Area Network (LAN) or direct coxial connections.

QUESTION 12d. What type of internal controls and management analysis capabilities will the contractor be required to provide for SEC use? What kind of non-public system processing will be required, and how much space in EDGAR will be devoted to non-public information?

ANSWER. The SEC will require the contractor to maintain a variety of data to produce recurring management reports. Some basic examples are: number and kinds of filings received in a given period of time, specific characteristics of filings, internal distribution of filings, breakdowns of the different methods of transmission used by filers, etc. These and other management reports will be developed by the contractor at the time of initial system implementation. In addition, as the system evolves over time other types of controls and management reports will be developed as the need arises.

The Edgar system will employ a number of internal controls to preclude unauthorized access. First, the system will be housed in a physically secure location with access tightly controlled. In addition, at least two levels of software control will be implemented. The first will require positive identification by anyone attempting to sign on to the system. The second level of software security will be user specific and will require the user to input a specific password known only to him or her.

The only kind of non-public system processing that will be required is the storage and maintenance of non-public data. Current estimates are that approximately 5% of the Edgar space will be devoted to non-public information.

SEC STAFF RESPONSE TO
QUESTION OF CHAIRMAN ENGLISH,
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QUESTION 13. The costs of supporting a data base service include the costs of acquiring and maintaining the data and the cost of the communication services used to connect with users. For an on-line data base service, what percentage of revenues typically are needed to pay the communications costs?

ANSWER. The communications costs for a typical on-line data base service is usually 20% to 25% of the revenues depending upon the structure of the telecommunication capability. Costs of acquiring the data are estimated to be 15% to 40% depending upon whether the service purchased a data base for resale or developed the data base on its own. The cost of processing including maintenance is estimated to range from 30 to 55%, depending upon the type of services offered.

SEC STAFF RESPONSE TO
QUESTION OF CONGRESSMAN KINDNESS,
Hearing of April 29, 1985

QUESTION 1. Can you quantify for us the level of activity under the pilot system (in terms of the corporations participating and the number of filings)? Do you believe that level will be indicative of the participation in the fully operational system?

ANSWER. There are approximately 150 companies actively participating in the Edgar pilot project. (This number does not include the 12 registered systems under the Public Utility Holding Company Act of 1935, which include over 170 reporting companies which began electronic filing of documents under that Act in July, 1985.) From September 24, 1984 (the date the first live filing was received) through July 19, 1985, 1,241 live electronic filings have been received and processed by Edgar.

The level of activity in the pilot is not indicative of what is expected in the fully operational system since electronic filing in the pilot is voluntary and it is anticipated that participation in the operational system will be mandatory. The pilot was designed to accommodate the filings by up to 1,000 Registrants, which only represents approximately 10 percent of the registrants filing reports with the Commission.

The Commission staff believes that the operational contractor sale of filing data will be sufficient to allow the re-coup of the $50 million cost and reasonable profits.

SEC STAFF RESPONSE TO
QUESTION OF CONGRESSMAN KINDNESS,
Hearing of April 29, 1985

QUESTION 2. What will happen should the contractor begin to lose money? Who will own, maintain and run the system should the contractor determine that it is not economically feasible to continue?

ANSWER. Even if the contractor does not recapture its investment, the contractor is obligated to continue to perform. Nevertheless, if the contractor breaches the contract, the Commission would seek whatever legal remedies it had against the contractor. In addition, the Commission would examine a range of options to complete the project. The spectrum of alternatives extends from requesting additional appropriations to continue the project, to finding a contractor willing to assume responsibility for a negotiated portion of the operational project or to a resolicitation of the contract.

Under the anticipated cost-sharing contract, the primary cost of the Edgar operational system would be borne by the contractor. These costs are estimated to be $63.2 million over 7 years, with a fiscal 1987 cost of $18.7 million and a fiscal 1988 cost of $18.8 million. These costs include both SEC processing and front-end capital acquisition costs. In both fiscal 1987 and fiscal 1988, the Commission expects to request appropriations of $1,255,000 to cover the costs of SEC staff who will assist filers as they convert to electronic filings and who will support the filing review branches as they are trained in electronic processing. If, however, the cost-sharing contract does not include SEC processing costs, the SEC Edgar appropriation would have to be increased by $8 million in fiscal 1987 and $7.5 million in fiscal 1988.

SEC STAFF RESPONSE TO
QUESTION OF CONGRESSMAN KINDNESS,
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QUESTION 3. Will there be provisions in the fee structure for those users who would have initial capital costs for the technology required to participate in the program?

If so, how will this be determined and managed? If not, are these not inequities which should be corrected?

ANSWER. It is not anticipated that filers in the Edgar system will have significant capital costs for participating in the program. In this regard, one of the most technically difficult aspects of the Edgar Pilot, which has succeeded, has been the receipt of filings from filers using their existing hardware and software.

It also is not anticipated that users will incur significant capital costs to access the Edgar data base, because many vendors will make the Edgar data available on a large variety of equipment. Thus, there is no plan to adjust the structure of user fees for access to the Edgar data base for those who incur initial capital costs. Moreover, electronic access to the Edgar data base will be in addition to access in paper and microfiche which is the current system of dissemination and which will continue. Free access to the data base will be available in the Commission's public reference rooms. We therefore do not believe that there is any inequity in not adjusting the fees.

SEC STAFF RESPONSE TO
QUESTION OF CONGRESSMAN KINDNESS,
Hearing of April 29, 1985

QUESTION 4. To what, if any, extent will the SEC participate in the setting of fees?

ANSWER. The SEC will only regulate the contractor's price for wholesale service, which is the automatic transmission of all publicly filed Edgar documents. This fixed price will be set forth in the proposals and reviewed annually. It will be based upon the contractor's costs of service and the public demand for the service.

SEC STAFF RESPONSE TO

QUESTION OF CONGRESSMAN KINDNESS,

Hearing of April 29, 1985

QUESTION 5. Will the SEC have any control over the possibility of increases in fees?

ANSWER. Yes. The contractor must obtain SEC approval of any increase in the wholesale subscription fee. Such an increase would require a complete, independently audited cost justification showing both a need for increased fees and an explanation as to why the contractor's initial fee was incorrectly set. The SEC also will continue to regulate the price of basic microfiche and copy service.

SEC STAFF RESPONSE TO
QUESTION OF CONGRESSMAN KINDNESS,
Hearing of April 29, 1985

QUESTION 6. Will the costs be the same for large institutional users as it is for small private users?

ANSWER. Yes. The cost of wholesale service will be the same for all users. However, as a practical matter, small individual investors will not be interested in wholesale service as it entails the automatic transmission of all filings.

Individual investors will have free access to the Edgar data base in the Commission's public reference rooms and will continue to be able to purchase microfiche and paper copies of the filings at nominal charge. With respect to off-site electronic access, the Commission believes that the individual investor will be better serviced by the various retail providers that will develop. This group likely will include the various information libraries, such as the Source, Dialog and Mead Lexis/Nexis, that already exist. It will also include large brokerage firms offering the information as part of a full automated brokerage package (possibly entailing automated executions, portfolio analysis and investment advice). A variety of automated advisory services will also be likely to offer the individual investor access to Edgar information.

By promoting widespread unrestricted commercial sale of Edgar information, the Commission will ensure that the individual investor has a choice of the widest possible Edgar-derived services, in the widest range of formats, at a free-market based price that is likely to be the lowest possible. This will also ensure the least governmental intrusion into an existing, as well as emerging, area of the private sector.

SEC STAFF RESPONSE TO

QUESTION OF CONGRESSMAN KINDNESS,

Hearing of April 29, 1985

QUESTION 7. Mr. Shad stated that there were approximately 85 different manners of accessing the EDGAR system. They included disks, magnetic tape, etc. How many different vendors are represented by these products?

ANSWER. The 85 different manners of accessing the Edgar system referred to in Mr. Shad's statement related to diskettes prepared on 85 different word processors or personal computers that can be translated and reformatted by "Antares" a machine manufactured by Antares Corporation. The total vendor population represented by these products are approximately 50. Filings also may be made in the Edgar system using several communication protocols, two public networks and magnetic tapes prepared on many types of equipment.

SEC STAFF RESPONSE TO
QUESTION OF CONGRESSMAN KINDNESS,
Hearing of April 29, 1985

QUESTION 8. How will the system affect access to information under the Freedom of Information Act? If there is no effect -- what incentive is there for users to pay any additional costs above that of reproduction?

ANSWER. There will be no effect on access to information under the Freedom of Information Act. Decisions to release or withhold information will continue to be made by Commission personnel. The incentive for users to pay for electronic access to public filings is that users will have instantaneous access to filings. This is of paramount importance because Commission filings contain financial or other information which affects the trading price of securities.

The staff is looking into the legality of protecting the contractor from requests for the entire data base made under the Freedom of Information Act. If such a requester paid only reproduction costs rather than the shared cost with other bulk purchasers, the value granted by the contract would be undermined.

SEC STAFF RESPONSE TO

QUESTION OF CONGRESSMAN KINDNESS,

Hearing of April 29, 1985

QUESTION 9. If totally electronic, what provisions will be made for those users without the technology to access the system?

ANSWER. As noted above, the current system of dissemination to the public in paper and microfiche will continue. The system will be expanded under Edgar because there will be free public access to Edgar terminals in the Commission's public reference rooms. This will greatly expand the access of those who visit the public reference rooms outside of Washington, D.C. because while it now takes several days for microfiche to reach those public reference rooms, there will be instanteous access to electronic filings upon their acceptance.

B. LETTER FROM CHAIRMAN GLENN ENGLISH, GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE SUBCOMMITTEE, TO CHAIRMAN JOHN S.R. SHAD, SECURITIES AND EXCHANGE COMMISSION, DATED OCTOBER 23, 1985, WITH REPLY DATED NOVEMBER 13, 1985

GLENN ENGLISH, OKLAHOMA, CHAIRMAN

GERALD D. KLECZKA, WISCONSIN
STEPHEN L. NEAL, NORTH CAROLINA
ROBERT E. WISE, JR., WEST VIRGINIA
EDOLPHUS TOWNS, NEW YORK
JOHN M. SPRATT, JR., SOUTH CAROLINA

NINETY-NINTH CONGRESS
Congress of the United States
House of Representatives
GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
B-349-C RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

THOMAS N. KINDNESS, OHIO
JIM LIGHTFOOT, IOWA
JOSEPH J. DIOGUARDI, NEW YORK
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(202) 225-3741

October 23, 1985

The Honorable John S. R. Shad
Chairman
Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549

Dear Mr. Chairman:

Since the Subcommittee's April 29 hearing on electronic information systems, we have continued to monitor the SEC's progress toward implementation of the EDGAR system.

I want to congratulate you on the decision to release a pre-solicitation proposal for EDGAR in July. This document provided all interested parties with a much clearer picture of how EDGAR will operate and what is expected of the EDGAR contractor. Given the size, scope, and novelty of EDGAR, it is important that everyone understand what is involved.

As I indicated to you at the hearing, I did not think that the original EDGAR plan was realistic. I am pleased to see from the pre-solicitation document that the SEC is considering modifications in order to make EDGAR workable.

From my perspective, the most interesting change in the July proposal was the indication that the SEC was willing to use appropriated funds to support operation of the system. This is a very major difference from the plan as presented before my Subcommittee in April.

Subsequent informal contacts between the Subcommittee and your staff have suggested that the SEC is considering additional major modifications to the EDGAR plan. Possible changes include an increase in the amount of SEC funding and a reduction in the amount of equipment that the contractor may be required to supply to the SEC.

If the EDGAR plan is modified in any significant way from the pre-solicitation document, I strongly recommend that the SEC issue another pre-solicitation document for public comment. An additional comment period will help to maximize understanding of the SEC's new plans and to minimize confusion among potential bidders. Once a formal RFP is issued, the limitations of the procurement process will prevent contact between the SEC and bidders. It would be unfortunate if a lack of bids or subsequent bid protests resulted in additional delays in the future.

I also recommend that the SEC reconsider the plan to eliminate paper filings as soon as EDGAR is operational. There are many people who now rely on the paper filings, and they should be given a reasonable period to make a transition to the new system. The changeover to EDGAR will be complex in any event, but the maintenance of a dual system for a period of time will allow everybody to ease into the new technology.

It is also important that a backup system be maintained for a significant period of time to ensure against the forseeable confusion of new equipment as well as unforseen failures. Even a brief failure of EDGAR could be disastrous if a complete, operational backup system were not available. Continuation of paper filings for a reasonable period of time is the best way to achieve both of these objectives.

Thank you for your consideration of my suggestions. The Subcommittee will be continuing its work on electronic information systems, and we look forward to continued cooperation with you and your staff.

Sincerely,

Glenn English
Chairman

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE CHAIRMAN

NOV 13 1985

The Honorable Glenn English, Chairman
Subcommittee on Government Information,
Justice, and Agriculture
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman English:

This is in response to your letter of October 23, 1985, regarding procurement of the operational Edgar system. As you noted, the Commission is modifying its initial system design. To ensure that all interested parties are aware of decisions that have been made in response to comments received respecting the pre-solicitation document, a summary release describing changes to the Request for Proposal will be published in the Federal Register next week. In addition, a meeting of all parties interested in the Edgar operational system will be held in the near future to discuss recent changes to the proposed RFP and elicit further comments.

The operational system will provide for investors to receive paper either directly from Edgar or by blowing back microfiche. It will be possible for paper created from an electronic filing to be available within minutes anywhere within the United States. It is also assumed that investors will continue to receive paper copies of filings, e.g. prospectus and proxy material, directly from the issuers. A paper filing will be required of filers along with the official electronic filing for their initial six months on the system in order to provide the dual assuredness discussed in your letter.

Steps are now being taken to improve the readability of Edgar pilot microfiche by reducing the number of lines per page from 100 to 66. Beginning in December, the quality level will be higher than the ordinary microfiche-to-paper process, eliminating fuzzy copies produced from existing Edgar microfiche.

Enclosed is the copy of a letter I recently sent to Chairman Dingell which describes modifications to the operational Edgar system in greater detail.

Sincerely yours,

Shad

John S.R. Shad

Enclosure

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

October 30, 1985

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U. S. House of Representatives
Washington, D.C. 20515

Dear Chairman Dingell:

As discussed, we have made some major changes in the Edgar electronic disclosure system in response to concerns previously raised.

As originally proposed, the entire cost (including the Commission's internal receipt and processing systems and work stations) would have been put out for competitive bids. The contractor would recoup its cost and a reasonable return on the investment through user fees, approved and monitored by the Commission.

The Committee Report indicated that such a "no cost" contract "would enable the Commission to avoid the authorization and appropriations process of the Congress."

The Commission therefore plans to revise the Request For Proposal (RFP) to indicate the Commission's willingness to assume responsibility for funding the internal processing system and work stations, subject to Congressional authorizations and appropriations.

The contractor will be obligated to finance the dissemination system. The Commission's contribution (preliminarily estimated to range from $30 to $40 million, depending on the bids received) will be paid over the seven-year life of the contract.

As you know, in the last three fiscal years, registration and other fees have exceeded the Commission's budget by about $70 million. Fiscal 1986 fees are expected to exceed the budget by about $30 million. Thus, such fees in excess of the budget are much more than adequate to fund the Commission's portion of the cost of the system.

The RFP will also require bidders to address how any conflicts of interest will be avoided. This will be one of the many areas carefully reviewed in the light of the spirit, as well as the letter of the law and perceptions, before the contract is awarded.

Also, as discussed with you and your staff earlier this year, the Commission released a pre-solicitation document on the contemplated operational Edgar system. Eighteen responses were received. Based upon those comments, the Committee Report and the changes suggested above, the following modifications in the procurement process and operational system are contemplated:

- Image processing is being deferred at this time, because the present technology would impose exorbitant cost on filers and the SEC. The effect will be minimal because financial information from annual reports to shareholders will be included in 10Ks.
- Transition from the pilot to the operational system has been expanded from six to nine months in order to provide a longer parallel operation and ensure system reliability.
- The time anticipated to convert all filers to Edgar has been expanded from 2 to 3 years, in order to provide greater assistance to filers in the transition.
- Bidders will be given 120 days to respond to the operation of RFP.
- The time for SEC consideration of the bids will be 90 days.
- Two full-time procurement specialists have been added to assure full compliance with all regulations in awarding the operational RFP.

I would appreciate any comments or suggestions during the coming week. The following week the Commission's Executive Director and Comptroller will brief the House and Senate Appropriations Subcommittees on the change in the proposed financing of the operational system. Then the full Commission will consider the RFP. It is anticipated that the RFP will be released during November with bids due in March 1986.

You and your staff will be kept informed as we progress to a system which will significantly improve the efficiency and fairness of the securities markets and the Commission's ability to discharge its Congressional mandate.

Sincerely yours,

Shad

John S.R. Shad

APPENDIX 2.—ADDITIONAL INFORMATION SUBMITTED BY THE NATIONAL LIBRARY OF MEDICINE

A. LETTER FROM DR. DONALD A.B. LINDBERG, DIRECTOR, NATIONAL LIBRARY OF MEDICINE, DATED DECEMBER 12, 1985, TRANSMITTING REPLIES TO QUESTIONS FROM CHAIRMAN GLENN ENGLISH

DEPARTMENT OF HEALTH & HUMAN SERVICES
Public Health Service

National Institutes of Health
National Library of Medicine
Bethesda MD 20209

[December 12, 1985]

Hon. Glenn English, Chairman
Government Information, Justice,
and Agriculture Subcommittee of the
Committee on Government Operations
B-349-C Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. English:

I am pleased to provide written answers to the questions posed in your letter of October 28, 1985 following the Subcommittee's hearing on the Electronic Filing and Dissemination of Information by Federal Agencies.

I want to thank you for the opportunity to appear before your Subcommittee and present testimony relating to the National Library of Medicine's MEDLARS. I hope this additional information will clarify some of the issues we discussed.

Sincerely,

Donald A.B. Lindberg, M.D.
Director

Attachments

QUESTIONS FOR DR. DONALD A.B. LINDBERG
FROM THE
SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE

1. Question: In your statement, you referred to "cooperative efforts with the commercial sector," including "distribution of database subsets on video discs" and "new and innovative products and services." Please provide more details on these new products and services.

Answer: Since initiating online MEDLARS services, NLM has provided access directly to its databases from its own computer resources or by making tapes of the databases available through leasing them to commercial vendors. Because of the size of the NLM databases, tape distribution has been limited to organizations having major computer resources. With the development of sophisticated mini-and microcomputers it has become feasible for individual users and organizations with smaller computers to set up local retrieval capabilities for files of substantial size. The Library has therefore decided to make it possible to mount subsets of MEDLARS on personal or institutional computers. NLM has developed a subset policy and license agreement through which portions of the total MEDLARS database can be made available to the Library's domestic users. NLM received a number of requests from entrepreneurs who want to create subsets on videodiscs, package them with hardware and software, and market them. NLM discussed collaborative arrangements with them and is entering into experimental agreements that grant the vendor a nonexclusive right to copy at his expense and to market and distribute commercially, optical disc systems containing the content of the MEDLARS databases. The project will make it possible to evaluate the utility of and the market for NLM data distributed on optical disc systems by other organizations. To date, three companies have signed agreements with NLM and several others have expressed interest.

2. Question: Mr. Lanman indicated that he thought that NLM's statute qualified under the User Fee statute as another law that prescribes a different basis for establishing fees. Please supply a complete legal analysis for this conclusion.

Answer: Under section 382(c) of the Public Health Service Act (42 U.S.C. 277(c)), the National Library of Medicine may charge for its publications, materials, facilities, or services. This section authorizes the Secretary of Health and Human Services to prescribe rules under which the Library will provide copies of its publications or materials, and make available its facilities or services, to public and private agencies, organizations and individuals. As further stated in the statute: "Such rules may provide for making available such publications, materials, facilities, or services (1) without charge as a public service, or (2) upon a loan, exchange, or charge basis, or (3) in appropriate circumstances, under contract arrangements....." This section was enacted on August 3, 1956 by Public Law 941, 70 Stat. 960. The pertinent legislative history states:

BEST COPY AVAILABLE

> "The Committee expects, insofar as feasible and taking into account accepted library practice, that such charges will be levied when the services to be rendered or the materials or facilities to be made available are other than routine and obviously and clearly convey a special, identifiable, added benefit to such non-public agency, organization, institution, or individual and that such charges will be reasonable in the light of the cost and the limited usefulness to the public of the particular materials, facilities, or services involved. This provision, however, is not to be construed to deny the Library the right to decline to undertake bibliographical or other tasks of unusual scope or magnitude for individuals or agencies outside the Federal Government whenever such tasks are not clearly and predominantly in the public interest, or whenever the resources and schedules of the Library will not permit the assumption of such tasks." Senate Report No. 2071, 84th Cong., 2d Sess., p. 3 (1956)

Consistent with this statute and its legislative history, the Secretary of Health and Human Services has issued regulations, at 42 CFR § 4.5(d), providing that the Director of the Library may, in accordance with schedules available at the Library on request, charge fees reasonably designed to recover all or a portion of the cost to the Library, including personnel costs, or providing any reference, bibliographic or reproduction services, including specifically the cost of providing access to the MEDLARS tapes. This paragraph states in pertinent part: "Such fees shall be charged only where the nature of service in question is beyond that normally provided to the general public or health sciences professionals, or where library resources are limited or unduly taxed."

The User Fee Statute, 31 U.S.C. 9701, authorizes the head of each agency to prescribe regulations establishing the charge for a service or thing of value provided by the agency. Each charge must be fair and based upon the cost to the Government, the value of the service or thing to the recipient, the public policy or interest served and other relevant facts. Paragraph (c) provides that the statute does not affect a law of the United States: "(1) prohibiting the determination and collection of charges and the disposition of those charges; and (2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases." This provision and the other substantive provisions of the statute have been retained virtually without change since they were enacted in 1951 as part of the Independent Offices Appropriation Act of 1952 (P.L. 137, Approved: August 31, 1951.) The House Report (No. 384 on H.R. 3880, 82d Cong., 1st Sess.), refers to studies by other committees of Congress and indicates that the User Fee Statute was enacted pending more specific legislation as a result of such studies. The provision apparently was viewed as a temporary measure, "which would authorize and encourage the charging...of fees to the extent permitted under present basic laws, but which in no way conflict with studies now under way to effect changes in such basic laws." (p. 3 of H.R. Rep. No. 384.)

Based upon the plain language of 31 U.S.C. (9701(c)(2) and the pertinent legislative history, it is clear that the User Fee Statute was not intended to interfere with more specific statutes authorizing the imposition of fees; thus, the User Fee Statute is not intended to preempt such specific laws, but rather to exist concurrently with those laws (note the language that a charge may be redetermined under the User Fee Statute consistent with the basis for a charge prescribed in a more specific statute). While the Library's specific authority for imposing fees, 42 U.S.C. 276, does not explicitly prescribe a basis for determining charges, its legislative history does prescribe a rule of reasonableness and establish boundaries for the imposition of charges, boundaries which are more explicitly stated in the regulations governing the operation of the National Library of Medicine. Given the general nature of the User Fee Statute, the specific nature of the authority of the National Library of Medicine to impose charges for its materials and services, the specific expressions of congressional intent that the User Fee Statute was not intended to preempt such specific statutes, the fact that the NLM authority was enacted after the User Fee Statute with no indication of an intent that it was to be limited by that statute and the generally accepted rule that statutes are to be construed to eliminate any potential conflict, it is reasonable to conclude that the Director of the National Library of Medicine may, in determining what charges to impose for access to MEDLARS, follow the rule of reasonableness referred to in the legislative history of the NLM authority or may, consistent with the language in 31 U.S.C. 9701(c)(2) determine the charge on the basis of the factors prescribed in that section, because such a determination would be consistent with the reasonableness basis of the specific NLM authority.

3. Question: You indicated that fees for NLM products and services are based on recommendations of the Board of Regents. Please provide documentation (minutes or transcripts of meetings, position papers, resolutions, etc.) of the recommendations of the Board on which current fees are based.

Answer: Documentation attached.

4. Question: You indicated that it would be "in violation of the use statute" to give away the MEDLARS tapes. In light of the provisions of 42 U.S.C. 276(c) and the conclusions of Mr. Lanman that the User Fee statute is not applicable to NLM, please explain your conclusion.

Answer: Both of the statutes and their legislative history leave no doubt that the imposition of charges lies within the discretion of the Secretary and the Director of the National Library of

Medicine. Accordingly, it would be more accurate to state that a failure to impose charges for the MEDLARS tapes would be inconsistent with the congressional intent reflected by the User Fee Statute and the specific NLM authority for the imposition of charges, because the materials and services made available are other than routine and obviously and clearly convey a special, identifiable, added benefit to those receiving access to the MEDLARS database.

5. Question: You stated that NLM wants to be certain that the quality of the services provided by those who lease tapes is suitable and that the integrity of the database is maintained. You also expressed concern about the possibility that someone might "initiate a service which we weren't aware of, couldn't monitor, couldn't guarantee." a) Does NLM have a statutory obligation to oversee the use of the MEDLARS database? If so, what steps does NLM take to review uses of the database? Does the obligation extend to reviewing use of the non-electronic database? b) Does NLM actively monitor the services offered by those who lease tapes in order to make certain that new information is made available immediately? Please explain in detail how any such monitoring is conducted. c) Are the users of MEDLARS unable on their own to distinguish between a service that offers an up-to-date database and one that does not? Is there some reason why a free market in the MEDLARS database would not force all sellers of services to make the newest information available as soon as possible?

Answer: The NLM believes it has an inherent responsibility to maintain the quality and integrity of its databases. This responsibility derives from the Library's statutory purpose ..."to assist in the advancement of medical and related sciences...to aid in the dissemination and exchange of scientific and other information important to the progress of medicine and the public health..." To be truly useful in the fulfillment of this stated purpose the imprimatur of the NLM on its products must be a guarantee of the accuracy of their content.

While NLM cannot monitor every step in the private sector's use of NLM tapes, it can, through its licensing agreements, exercise an element of quality control to assure the integrity of its databases. "Integrity" of a database has three components; accuracy, completeness and currency. NLM must be concerned with each when it licenses the private sector's use of its tapes. For example, every bibliographic entry made in MedLine is verified by NLM staff. If a private sector licensee wanted to create a database from the merging of citations from numerous sources, including MedLine, the integrity might be compromised with regard to accuracy. If the private sector vendor decided on the basis of the economics of his business to eliminate from the database those citations which had not been called for in the last six months, the integrity would be compromised with regard to completeness. In a similar manner, if for economic reasons the vendor decided to update the database only twice a year, the integrity would be compromised with regard to currency. While in the long run these violations of the integrity of the database would probably become recognized by the ultimate user, this might take a considerable length of time. In some instances, even years. During that time, considerable damage could result not only to the individual who failed to retrieve the most current information, but also to the public whose confidence in the integrity of a database bearing the NLM imprimatur becomes shaken. Once that happens, NLM's ability to carry out its mandate is severely compromised.

It is for this reason that NLM wherever possible, takes great care to assure the integrity of the database. It is why even in our experimental agreements with the private sector use of the optical disc that the agreement specifically states that although "the commercial organization shall be permitted to offer MEDLARS databases and/or portions thereof together with other databases so that value is added to the resulting product, the NLM reserves the right to review and approve such combinations prior to release."

In addition, the system that delivers the database must not distort the integrity. A system that mounts the complete database but uses retrieval software that can only retrieve a fraction of the database compromises its integrity just as surely as if the whole database had not been mounted in the first place.

6. Question: You agreed to provide the Subcommittee with a breakdown of the cost of operating MEDLARS. As part of this data, please list separately the direct cost to NLM of producing a copy of the MEDLARS database on tape and direct cost of operating the online service for paying customers. In order to show that NLM is not making a profit, please show how the costs and revenues are in balance.

Answer: NLM pricing policy for its MEDLARS products and services seeks to recover, in the aggregate, the full cost of accessing the system, plus (effective April 1, 1985) from the foreign users a proportionate share of the cost of creating the database. NLM does not seek to recover the direct (access) costs of producing MEDLARS related publications, for we have no control over their price--which is set by GPO. Below are the latest available cost data:

FY 1984 MEDLARS
Cost Breakdown
(dollars in thousands)

Data Creation	$5,519
Access Costs (incl. publications)	7,331
Total	$12,850

The access cost of online services and tapes is $6.6 million. This amount is thus the target figure for our user charge collections in FY 1984. Included in these aggregated access costs are: personnel, materials, equipment, and services associated with computer systems support, telecommunications, network management, training, related supplies including blank tapes, royalty payments, postage, printing, travel (relating to online system operations) plus all administrative overhead and indirect costs, including billing, collecting, and accounting.

The annual direct cost to reproduce and distribute the MEDLINE database and associated Medical Subject Heading vocabulary file on tape is approximately $10,000. This includes monthly update tapes as well as a complete replacement copy of the data from 1966 to the present to reflect changes made to the records. The direct (access) cost of providing online services (excluding those databases with proprietary data for which an additional royalty charge is levied) is approximately $20/connect hour.

In FY 1984, approximately $7 million in MEDLARS revenues were collected. This is 5-6% above the actual online and tapes access cost of approximately $6.6 million described above. However, it is difficult to predict more precisely than this how revenue will compare to cost, and the Board of Regents of the National Library of Medicine have recommended keeping prices stable.

The reason NLM returns MEDLARS user charges to the Treasury, yet makes no profit, is because some of the access costs are paid through the Library's appropriation (e.g., personnel and computer system support) while some are paid directly from revenues (e.g., telecommunications, royalty fees). In effect, therefore, we return to the Treasury an amount approximately equal to the access costs which are provided for in our annual appropriation. For FY 1984, the amount returned to the Treasury was $3,300,000.

7. Question: NLM uses National Technical Information Service to market MEDLARS services. Please describe the arrangement between NTIS and NLM, the flow of funds, and the reasons why NLM finds it necessary or convenient to use NTIS. Provide citations to, and explanations of, any statutory authorization for the use of NTIS. Could NLM perform for itself the services that NTIS performs? If not, why not?

Answer: Since 1976, NTIS has performed billing, collecting, and accounting functions related to the usage of NLM's MEDLARS services. Under the terms of the agreement NTIS is permitted to retain a percentage of the MEDLARS user fees it collects to defray its costs.

NTIS bills MEDLARS users, collects their payments, and maintains accounting records. As authorized by NLM, payments to contractors for costs not provided for in the NLM appropriation are made directly by NTIS utilizing user charges collected; revenue balances are authorized by NLM for return to the U.S. Treasury.

This mechanism has worked quite satisfactorily. NLM first began using NTIS for MEDLARS brokerage services after a study was conducted by the Department's Inspector General. The authorizing legislation cited by NTIS for engaging in MEDLARS brokerage services for the NLM and other Federal agencies is 15 U.S.Code 1151-1157 and 1525-1527.

NLM does not presently have the necessary personnel that would be required to perform billing, collecting, and accounting services for the more than 3,000 MEDLARS user accounts, nor does it have the necessary revolving fund mechanisms.

NATIONAL LIBRARY OF MEDICINE

POLICIES OF THE BOARD OF REGENTS

Approved by NLM Board of Regents
January 27, 1983

III. USER CHARGES FOR ONLINE SERVICES

Consistent with the National Library of Medicine Act (Section 383), the NLM Board of Regents has established a domestic pricing policy committing NLM to recover costs associated with the provision of services. Such costs include communications, computer services, training, and related indirect costs. The Board of Regents has delegated to the Director of the National Library of Medicine the authority to set prices at the level required to ensure effective and efficient management of the system and the authority to establish priorities for users. To the extent practicable, such costs recovered from member institutions will be independent of their geographic location.

The Library's basic position on cost recovery is that the user community--biomedical researchers, educators, health practitioners, and students--should share in the cost of providing online access to NLM's databases. Specifically, the Library believes that it should bear the cost of generating the database, just as it always has done in order to carry out the directive of the NLM Act. Over and above the costs associated with basic NLM functions, the Library believes, the biomedical user community should be assessed fair and reasonable charges for services. The Library adheres to the view that all users should have equal access to NLM services and that all types or sectors of users should pay the same price or charge for services. Equal treatment, shared costs, and fair prices are the three legs on which NLM policy rests.

This user charge policy is consistent with NLM legislative authority, Federal policy, the intent of the Congress, the findings of the General Accounting Office (1982), and the recommendations of the Board of Regents.

Charging Policy

NLM should charge for providing online access to databases on the NLM computer system. The charge should be based on recovering the full cost to NLM for providing access to databases on the NLM computer system and should not include the cost of database generation and maintenance.

Cost Elements

Cost elements should include personnel, materials and services associated with the following: telecommunications between the computer system and U.S. user terminals; computer usage; online network management; training of personnel operating online services; preparation and distribution of manuals and training materials; accounting and billing for online services. Cost elements should also include the associated administrative overhead costs such as: printing, postage, travel and indirect costs as reflected in the NIH management fund (covering items such as plant usage and maintenance costs, guard services, engineering services, etc.).

Approved by NLM Board of Regents
January 27, 1983

Charging Formula

The basis for establishing charges should be the same for all domestic users, independent of geographic location and commercial or non-commercial status. The formula for charging users may include: connect hours, computer resource units, printing, display of information, stored data, telecommunications, manuals, and training materials and activities. In addition use charges and minimums may be charged as appropriate.

Disposition of Funds

Excess funds should be returned to the U.S. Treasury in accordance with U.S. government requirements.

Establishment, Changes and Review of Policy

Recommendations regarding pricing policy and policy changes should be made by the Board of Regents and submitted to the Secretary. Policies should be reviewed annually by the Board of Regents.

Approved by NLM Board of Regents
January 27, 1983

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service
National Institutes of Health
National Library of Medicine

Memorandum

Date May 29, 1984

From Chairman, Board of Regents
National Library of Medicine

Subject Response to Systems Review Board Recommendations on the Pricing of NLM Products and Services

To The Assistant Secretary for Health
Through: Director, NIH Signed

In accordance with its statutory responsibilities the National Library of Medicine's Board of Regents reviewed the DHHS study of "NLM Cost Recovery and Competition with the Private Sector." You had specifically asked us to consider the recommendations concerning differential pricing. In order to perform a thorough review of these matters a subcommittee of the Board convened an Open Meeting on Pricing on March 26, at which representatives of the public and private sectors were invited to comment and provide testimony on the differential pricing issue. The attached report, prepared by the pricing subcommittee and amended and approved by the full Board at its meeting of May 24-25, reflects their considered judgment on this important issue as well as other related matters.

Since the Regents believe the ultimate beneficiary of the dissemination of all biomedical information is the general public, it does not support the idea that for domestic access there should be any differential pricing by type of user. It has a somewhat different view with respect to foreign access, believing that NLM should make a modest increase in pricing on the premise that as non-U.S. taxpayers, foreign users should share in supporting the generation of the MEDLARS databases.

The overriding concern of the Board is that the American public receive rapid and easy access to biomedical information, regardless of the source. To that end the Board encourages NLM to work cooperatively with database producers in the private sector to create linkages, reduce production costs, and to otherwise facilitate access to all relevant health information. In this important matter the Nation's health is best served by a partnership with the private sector rather than an adversarial relationship.

W.D. Mayer, MD
William D. Mayer, M.D.

Attachment

bcc: NLM Board of Regents Members
Prof. Martha E. Williams
Mr. Richard Schmidt
Ms. Selma Goldblatt
Mr. Wallace Keene
Mr. George Russell
Mr. Kent Smith
Dr. Elliot Siegel
Mr. Sean Donohue
Mr. Robert Mehnert
Ms. Karin Colton
NLM Senior Staff

5/29/84

Executive Summary
Board of Regents Response to DHHS Report

I. NLM's Organizational Objectives

The Board of Regents reaffirms the following objectives for the National Library of Medicine:

1. Consistent with (a) its legislative mandate, (b) a need to ensure integrity of its data base, and (c) a need to retain contact with and an understanding of the information requirements of the ultimate users, the NLM will continue to produce and to distribute its information products and services to users.

2. NLM will continue to seek ways to enhance the productivity of its in-house operations and the performance of its products and services, through the exploration and exploitation of new technologies.

3. Because NLM's data bases complement those of other health-related data base producers (e.g., BIOSIS, Excerpta Medica, PsychInfo, Chemical Abstracts Services, Institute for Scientific Information), NLM will attempt to acquaint MEDLARS users with the scope and coverage practices of other data base producers and facilitate user access to these other data bases. NLM will also seek ways of collaborating with other data base producers to seek mutually advantageous ways for decreasing costs of data base production.

4. The health interests of the American public are best served by the rapid and easy accessibility to all biomedical literature and information announced by the various data bases. The Regents further believe that accessibility will be influenced much more by the creation of linkages between data bases than by manipulation of NLM prices.

II. Pricing NLM's Information Products and Services to Domestic Users

1. The Board of Regents concurs with the DHHS Report's recommendations that "no-charge" and "market value" pricing be rejected.

2. The Board of Regents agrees with the Report's finding that NLM's policy of recovering "access" costs is reasonable and should be retained. However, the Regents feel that it is important to clarify that the recovery of access costs is interpreted to mean total cost of access across all MEDLARS-related products and not by individual product.

3. The Board of Regents reaffirms its policy that public support of the cost of generating the data bases is intrinsic to NLM's mandate. The Board continues to believe that NLM, through its appropriation, should pay the cost of creating the data bases and that the biomedical community should incur the full cost to access the system.

4. The Board of Regents has acted on the DHHS Report's recommendation that it review the issue of differential pricing as it would apply to types of domestic users. It convened an Open Meeting on Pricing on March 26, 1984, in which representatives of various interests were invited to comment and offer testimony on the issue. Based on this review, it is the Board's considered judgement that differential pricing by type of domestic user be rejected on the grounds that: (a) the identity of the ultimate beneficiary is often obscure; (b) increased income to the U.S. Treasury would be minimal; (c) a case has not been made that the private sector's competitive position would be enhanced, especially if one accepts the "first dollar" principle which holds that pricing for all types of users be kept low in order that users have sufficient resources left to use the other health-related data bases containing complementary information; (d) the cost of providing access to both commercial and non-commercial domestic users is already recovered entirely from the revenues generated, therefore the cost of that service is not a burden to the taxpayer; and (e) domestic commercial users, as taxpayers, have contributed their share to the costs of data base creation

5. Although the Board continues to embrace the principle of equal access to all types of domestic users at an equal price, it does recommend the continuation of differential pricing by product and time of day. This serves to minimize peak system loads.

6. In addition, the Board of Regents holds the view that equity is best served by the introduction, when appropriate, of differential pricing by type of service provided. Such a situation arises when data bases or subsets of data bases are leased from NLM, in tape or other machine-readable format, for mounting on another organization's computer system. One organization may provide access to the leased data base contents to its own members, whereas another organization may provide or vend data base access beyond the boundaries of its corporate responsibility. Higher prices may be justified in the latter instance.

III. Foreign Use

1. Although not specifically addressed by the DHHS Report, the Board of Regents feels it essential to consider foreign use of the NLM's products and services as part of its review and updating of its pricing policy. Moreover, Congressional sources as well as a

number of participants at the March 26th Open Meeting on Pricing have urged NLM to charge foreign users more than domestic users on the grounds that such users are not U.S. taxpayers and have not contributed towards the costs of data base creation.

2. The Board of Regents recommends a differential pricing policy for foreign users' access, whether provided directly by NLM, domestic tape leasers or foreign tape leasers. While the provision of services to foreign users does not now impose an economic burden on the U.S. taxpayer (revenues received cover the costs of providing access), it is, nevertheless, justified to ask the foreign user to pay--in addition to the cost of access--an appropriate portion of NLM's data base creation costs which are covered by Congressional appropriation and therefore subsidized by the U.S. Taxpayer.

3. In the determinination of prices, consideration should be given to the economic development status of the foreign country, to the reciprocal information policies of the foreign country, and to the direct and indirect benefits resulting from foreign access to NLM data bases.

INTRODUCTION

This document is the response of the Board of Regents of the National Library of Medicine (NLM) to the Department of Health and Human Services' review, Cost Recovery and Competition with the Private Sector.

The principal recommendations of that Report reaffirmed NLM's present pricing policy of recovering "access" costs, which is interpreted to mean total cost of access across all MEDLARS-related products and not by individual product. In doing so, the Report rejected the notion that the Library should adopt alternative policies of "no-charge" or "market value" pricing. The report also requested that the Board of Regents consider a policy of differential pricing by type of user, namely, that for-profit commercial organizations and individuals be charged "full cost."

In complying with the Department's request, the Regents have re-examined and, consequently, reaffirmed and restated the Library's organizational objectives in their broader context. Specifically, the NLM will continue to produce and to distribute its information products and services consistent with its legislative mandate. This ensures the integrity of the NLM data base, and enables NLM to retain contact with, and an understanding of, the information requirements of the ultimate users. With regard to its internal activities, the Regents encourage NLM to continue to seek ways to enhance the efficiency of its in-house operations and the quality of its products and services through the exploration and exploitation of new technologies.

The Regents remain committed to the belief that the health interests of the American public are best served by the rapid and easy accessibility to all biomedical literature and information announced by the various public and private data bases. The Regents further believe that accessibility will be influenced much more by the creation of intellectual linkages between data bases than by manipulation of NLM prices. Because the contents of NLM's data bases complement those of other health-related data base producers, for example, BIOSIS, Excerpta Medica, PsychInfo, Chemical Abstracts Services, Institute for Scientific Information, the Regents believe that NLM should attempt to acquaint MEDLARS users with the scope and coverage practices of other data base producers and facilitate user access to these other data bases. The Regents further believe that NLM should collaborate with other data base producers to seek mutually advantageous ways for decreasing costs of data base production.

In the belief that hearing various perspectives on the issue of differential pricing would contribute to their deliberations, the Subcommittee on Pricing of the Board of Regents convened an Open Meeting on Pricing on March 26, 1984, at which representatives of various interests were invited to comment and provide testimony on the issue. A list of the participants is in Attachment A.

Based on the organizational objectives stated above, and informed by the views expressed at the Open Meeting on Pricing, the Board of Regents has prepared this response which presents its considered judgment on the issue of differential pricing and certain other matters it considers pertinent.

BACKGROUND

The Board of Regents, in its continuing examination of the pricing policies of NLM, has attempted to formulate principles to guide the Library. The review of the Department's study on the Library's pricing policies thus provided the Regents with a new opportunity to elucidate the basic issues, to identify common ground, and to underscore the Regents' concerns that the basic mandate of the Library not be compromised.

The Congress established* the National Library of Medicine in 1956 "to assist the advancement of medical and related sciences, and to aid in the dissemination and exchange of scientific and other information important to the progress of medicine and to the public health."

Since it appropriated funds for the NLM, the Congress clearly meant to support with tax dollars certain essential library functions which were made explicit in the law:

> "1) acquire and preserve books, periodicals, prints, films, recordings, and other library materials pertaining to medicine;
>
> 2) organize the materials specified in clause (1) by appropriate cataloguing, indexing, and bibliographic listing; and
>
> 3) publish and make available the catalogs, indexes and bibliographies referred to in clause (2)....."

The Department study deals with the pricing of computerized MEDLARS search services and tape products that have evolved as extensions of the essential library functions mandated by the Congress in 1956. The study excludes consideration of pricing printed bibliographic products such as Index Medicus.

The Board of Regents' Subcommittee on Pricing of NLM Services has reviewed the latest cost-accounting data. The Regents conclude that the Library now recovers from the sale of its MEDLARS products and services the total cost of providing those services, that is, all costs other than those incurred in performing the essential library functions defined in the 1956 legislation. These include a pro rata share of the facilities, hardware, software, and the development costs of the on-line international system. Thus, the Library provides no subsidy to any user of its non-print MEDLARS products and services. To put it another way, the provision of computerized access to NLM indexes and catalogues imposes no additional financial burden whatsoever on the American taxpayer. The costs of the essential library functions would have to be borne whether or not MEDLARS services existed. As a result, the mandate and intent of Congress "...to aid in the dissemination and exchange of scientific and other information important to the progress of medicine and to the public health..." has been significantly enhanced without additional cost to the taxpayee.

---

* National Library of Medicine Act, Public Law 84-941

With regard to the support mandated by Congress and detailed above, there remain two related issues. The first is whether such support can and should be reduced through the recovery of additional revenues by some form of differential pricing based on type of domestic user. The second is whether foreign users of the system should enjoy the benefits of U.S. taxpayer support or should, in fairness, be asked to bear a portion of the cost of performing the essential library functions on which MEDLARS services are based.

DIFFERENTIAL PRICING FOR DOMESTIC USE

The Regents continue to reject the notion of differential pricing based on type of domestic user. In making this judgment the Board has carefully considered all the arguments in favor of such pricing.

There have been three major arguments raised in support of higher prices for commercial users. They are: a) that higher prices for commercial users would enhance competition in the marketplace; b) that it would increase the revenues to the U.S. Treasury and thus reduce the federal share of the generation costs; and, c) that users who derive "special benefit" should pay the "full cost" of service (as defined by the Office of Management and Budget [OMB] Circular A-25, "User Charges," which is not binding on NLM). Each has been considered in detail.

There are now six major data bases in biomedicine: MEDLINE, Excerpta Medica, BIOSIS, PsychInfo, Chemical Abstracts, and Science Citation Index. Each is unique; in general, one may not be substituted for another. They are, in fact, complementary, for the overlap in content with MEDLINE is rarely as high as 35%. However, in spite of their complementary content, it may be argued that they compete, at least to some extent, for the consumer's dollar. Two alternative positions have been advanced in this regard. The first argues that if NLM raises its prices to levels comparable to the other data bases, the use of the other data bases would increase.

The second argues that, for historical reasons dating back more than a century with the development of Index Medicus in 1879, MEDLINE is so preeminent in the field that it represents the necessary first purchase, and therefore if the price of MEDLINE is raised, the use of the other data bases would decrease.

Comments by participants at the Open Meeting on Pricing illustrated these divergent viewpoints.

For example, rather than have the Library increase its direct user charges, the vendors would prefer that NLM eliminate the "royalty" fees of 3 or 4 dollars the vendors now pay. The vendors state they would immediately pass the savings on to their customers in the belief that their customers would then have more money to buy access to their other data bases.

The representatives of the pharmaceutical and chemical companies state that the first data base searched is selected strictly on content, not price. Subsequent additional searching may be influenced by available budget. The medical librarians concurred in the "first dollar" view.

The Regents have sought evidence, unsuccessfully, to substantiate the view that data base developers and vendors would be in a better competitive position if the Library were to raise its user fees, but no such evidence has been found. The more likely result of NLM raising its prices for MEDLINE might well be a reduction in use of the other data bases. Given NLM's mandate, the Regents believe they are required to choose the alternative that will best ensure the availability of all pertinent data bases in biomedicine.

The second major argument is that differential pricing would increase the revenues to the U.S. Treasury and thereby lessen the appropriations needed to fund the generation costs. Moreover, the argument continues that this increased revenue would be achieved without restricting the availability of information to those who need it, since commercial firms are in a position to pay any reasonable price. Testimony at the Open Meeting on Pricing would partially confirm the last part of the argument. Certainly the initial search by a corporate user would be made on a data base chosen for its content, not for its price. However, the budgets of corporation libraries are limited and subsequent searching of complementary data bases would be influenced by cost. Still, the most important question is whether, through differential pricing, a significant increase in the net revenues of the U.S. Treasury would indeed result.

To evaluate statements made in the DHHS Report, the Regents have examined this question in consultation with several economists. The following are pertinent conclusions:

- The incremental cost is a clear business expense for such companies and therefore a potential tax write-off, resulting in reduced receipts to the Treasury.

- The increased cost to the companies would eventually be reflected in increased prices of their products and services.
- The Government is a major purchaser of those products and services.
- The estimates of increased revenues are predicated on no shift in either the searching habits or information access routes by those companies. This assumption is almost assuredly unwarranted.
- The increased cost of the products and services of these commercial companies would also be a tax write-off for many of the general users of these commodities.

Although it is extremely difficult to quantify these many possible effects, the Regents conclude that their cumulative effect makes it unlikely that such a price differential would result in any significant net gain to the U.S. Treasury.

The third major argument rests on the concepts of "special benefit" and "ultimate beneficiary" embodied in the OMB Circular A-25. Although the Regents are aware that OMB Circular A-25 is not binding on NLM because of the express authorities in the NLM Act, they are cognizant of the principles embodied in that regulation and have examined the issue of differential pricing in that light.

There is some ambiguity in the meaning of "special benefit" in the OMB Circular A-25. One interpretation is that when the service performed confers upon the recipient a special privilege such as the granting of a license, then the recipient should be considered as having received a "special benefit" and the full cost of the transaction should be recovered.

A second and far broader interpretation holds that even though the service provided is identical for all recipients, if the recipients use of the service contributes to some "special benefit" (e.g., potential profit from a new drug), then the full cost should be recovered.

Whatever position is adopted within these boundaries, the unequivocal recipients of "special benefit" are clearly the data base vendors. Yet, many who have repeatedly invoked OMB Circular A-25 not only do not want the vendors charged full cost but indeed advocate that they be given government data bases without any cost other than tape reproduction. This position is also advanced by the data base vendors when they request that the "royalty" be dropped in NLM's charges to them.

OMB Circular A-25 also states that when the identity of the ultimate beneficiary is obscure, no charge to the user may be appropriate. This the Regents interpret as recognition that societal benefit should be determinative. With this provision, one can clearly make the case for nondifferential pricing with, for example, pharmaceutical companies that develop new drugs for the public benefit, for chemical companies that try to protect the public from toxic substances, and for vendors that facilitate access to biomedical information.

The Regents' rejection of differential pricing for domestic users is based not only on the absence of any compelling argument in its favor, but also the compelling arguments against it.

It seems clear that the "obscure beneficiary" doctrine in OMB Circular A-25 is intended to suggest that even potential societal benefit should be determinative. The Regents therefore interpret A-25 as opposing the imposition of full costs on these commercial firms. This position is in accordance with the General Accounting Office's interpretation of the NLM's conformance to A-25.

As has already been pointed out, the current fees for non-print MEDLARS products and services totally recover the costs of providing these services and impose no additional burden on the taxpayer. Any additional charge, therefore, would be an offset to generation costs now paid by the taxpayer. These commercial users, unlike the not-for-profit users of these services, have, as taxpayers, already contributed through their taxes to offset the generation costs.

However, while the Regents reject differential pricing by type of user, they hold the view that equity is best served by the introduction, when appropriate, of differential pricing by type of service provided. Such a situation arises when data bases or subsets of data bases are leased from NLM, in tape or other machine-readable format, for mounting on another organization's computer system. One organization may provide access to the leased data base contents to its own members, whereas another organization may provide or vend data base access beyond the boundaries of its corporate responsibility. Higher prices may be justified in the latter instance. This is consistent with the Regents' dual aim of maximizing access while allocating costs fairly.

PRICING FOR FOREIGN USE

Although foreign use was not specifically addressed by the DHHS Report, the Board of Regents believes it essential to consider this use of the NLM's products and services in the context of updating and refining its pricing policy. Moreover, Congressional sources, as well as a number of participants at the Open Meeting on Pricing, have urged NLM to charge foreign users more than domestic users on the grounds that foreign users are not U.S. taxpayers and have not contributed to the costs of data base creation.

After careful consideration of the issue, the Board of Regents recommends a differential pricing policy for foreign users' access to MEDLARS, whether provided directly by NLM, domestic tape leasers, or foreign tape leasers. While service to foreign users does not now impose an economic burden on the U.S. taxpayer (i.e., revenues received cover the costs of providing access), the Regents believe it is nevertheless justified to ask foreign users to pay--in addition to the cost of access--an appropriate portion of those MEDLARS generation costs supported by the U.S. taxpayer.

In the determination of prices, consideration should be given to the economic development status of the foreign country, as well as other circumstances such as the reciprocal policies of other governments. Accordingly, the Regents wish to reserve the option to charge foreign users in developing countries lower prices than users from more developed countries. This is motivated by a concern for the public health status of those countries whose citizens might otherwise be unable to afford access to needed health information. A pricing differential of this kind is also consistent with the provision of OMB Circular A-25, which exempts the establishment of (higher) fees when the service is a courtesy to a foreign country.

CONCLUSION

The issues of competition between the public and private sectors have too often been polarized into adversarial action. Reasonable people will agree that this has not been constructive. The Regents have long been concerned with the adverse effects of these activities and strongly endorse a recent statement by former Board of Regents Chairman and information authority, Professor Martha Williams, who succinctly summarizes recent interactions:

> "A long-standing and much documented problem in the database industry is that of competition between the public and private sectors. There is concern by the private sector about opportunities they perceive to be lost because of governmental activity in the field...[yet], if the government had not carried out or sponsored much of the pioneering work in the development of databases and on-line systems, the information industry, both in the United States and worldwide, would not have reached the stage of development it enjoys today. Many of the major discipline-oriented databases, the telecommunications corporations, and nearly all of the on-line vendors of bibliographic databases owe much to the government (specifically the National Science Foundation, NASA, the National Library of Medicine, the Armed Forces, and the former Atomic Energy Commission) in terms of contracts, grants,

> and technology spinoffs leading to or influencing their development and success. The government did more than develop technologies; it also created markets for the new technologies, and it didn't happen overnight nor did it occur in competition with industry. The government filled a gap that at the time was not perceived by the private sector as being able to produce profits in the near term. Such investments by the government have paid dividends for the private sector, and no doubt this pattern will repeat itself. The information world is a complicated and dynamic world--there are many interdependencies. The roles are changing, the players are changing, and organizational entities are changing through mergers and acquisitions of organizations within and across sectors of society. It is difficult to say that any particular activity is the province of any particular sector or group. There are societal goods and economic goods. The common good and the bottom line are not necessarily parallel. While emotions may be strong on both sides, there must be give and take, checks and balances, and open-minded efforts to understand both sides of the problem. Information is a societal good, a commodity, and is seen as a vast economic resource. It is generated, processed, and used by all parts of the public and private sectors of society. Neither has exclusive claim to any particular domain; each needs the other."*

In conclusion, the Regents believe NLM has acted responsibly in ensuring equal access to its library and information services at an equal price to all users of the biomedical community.

The Regents assert that the ultimate beneficiary of the dissemination of all biomedical information is the general public and therefore that a domestic pricing policy is appropriate in which NLM pays the cost to create the data bases and the users pay the full cost to access the system. It is only with respect to foreign access that NLM should be willing to make a modest increase in price on the premise that, as non-U.S. taxpayers, foreign users should also share in the cost of building the data bases.

The Regents, in their commitment to improve the health of the American people, believe that NLM should make every effort to find ways to cooperate with other major biomedical data base producers to create linkages, reduce production costs, and otherwise facilitate access to all relevant health information. The National Library of Medicine has been a partner with the private sector in the past, and this partnership should certainly be fostered in the future.

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* Martha E. Williams, "Policy Issues for Database Systems," THE INFORMATION SOCIETY, Volume 2, Numbers 3/4, 1984, Crane, Russack & Co., Inc., pp. 381-417.

ATTACHMENT A

NATIONAL LIBRARY OF MEDICINE
BOARD OF REGENTS
SUBCOMMITTEE ON PRICING OF NLM SERVICES

OPEN MEETING ON DIFFERENTIAL PRICING
MARCH 26, 1984

MEETING ATTENDEES

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* Did not attend meeting but submitted written testimony.

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NATIONAL LIBRARY OF MEDICINE
BOARD OF REGENTS
SUBCOMMITTEE ON PRICING OF NLM SERVICES

OPEN MEETING ON DIFFERENTIAL PRICING
MARCH 26, 1984

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B. National Library of Medicine Documents

1. "MEDLINE CHARGES CHRONOLOGY", APRIL, 1985

MEDLINE CHARGES CHRONOLOGY

YEAR CHARGE FIRST IN EFFECT	CHARGE
1969	Payment on quid-pro-quo basis
1974	$100,000/first year ($50,000 - MEDLINE; $50,000 - ELHILL software) $ 60,000/each succeeding year ($50,000 - MEDLINE; $10,000 - ELHILL software maintenance)
1974	$ 50,000/year (effective 9-1-75)
1976	$ 50,000/first year $ 40,000/each succeeding year
1978	$ 50,000/first year $ 30,000/each succeeding year
1982	$ 20,000 minimum/year $4.00/connect hour)use $0.01/offline citation)fee
1983	Same as above with option of $3.00/connect hour for use between 6PM-6AM local time
1985	$ 15,000 minimum +

Domestic		Foreign
$4.00 connect hour)		$7.00
$3.00 connect hour)	use	$6.00
$0.01 citation)	fee	$0.03

NOTES:

1. Annual class-maintained MEDLINE files offered for the first time in 1975 for $2,000/year. Raised to $3,000/year in 1984. SDILINE in GENER format is $1,000/year extra charge.

2. Some of the toxicology databases have had separate license agreements at different rates.

3. In 1984, the backfiles (1966 up to current year) were priced separately at $10,000 minimum plus usage. The current year was available at $5,000 minimum.

4. In 1984, for the first time, minimums and usage was applied to other databases in addition to MEDLINE.

2. "TAPE LICENSE AGREEMENT—DOMESTIC OR FOREIGN TAPE CENTER SERVING DOMESTIC OR FOREIGN USERS," APRIL 1985

Tape License Agreement-Domestic or Foreign Tape Center Serving Domestic or Foreign Users

For the use of the National Library of Medicine's (NLM) databases in machine-readable form subject to the provisions outlined below:

1. Purpose

   a. This agreement describes conditions under which the NLM authorizes the license and permits its databases, or portions thereof, to be used by the organization signing below.

   b. Upon execution of this license agreement and payment of appropriate fees as outlined in the Pricing Schedule, the Licensee is granted a license to use machine-readable copies of NLM's databases, or to install portions thereof, on a non-exclusive basis.

2. Duration

   a. Subject to available appropriations, this license shall remain in effect for an indefinite period of time unless terminated by either party with a minimum of six (6) months written notice or unless revoked by the NLM in accordance with the provisions of subparagraph 2b.

   b. In the event that the Licensee fails to make payments specified by NLM within ninety (90) days of receipt of invoice, or if the Licensee fails to comply with the terms or conditions of this license, the NLM shall have the option to revoke this license by written notice of revocation to the Licensee. If the Licensee cures the breach to the satisfaction of NLM within sixty (60) days, the Agreement shall continue in effect without the necessity for renegotiation.

   c. Upon termination or revocation of this license, the Licensee must destroy or erase all data in machine-readable form obtained under this license as well as this data contained in any derivative files.

3. Copyright Constraints

   a. NLM will include the following statement regarding copyright notice on each physical volume (tape reel, etc.) containing NLM data sent in machine-readable form:

      > "Some material in this database is from copyrighted publications of the respective copyright claimants. Users of the database are referred to the publication data appearing in the bibliographic citations, as well as to the copyright notices appearing in the original publication, all of which are hereby incorporated by reference."

Tape License Agreement-Domestic or Foreign Tape Center Serving Domestic or Foreign Users

In addition some of the toxicology related databases (i.e., TOXLINE, CHEMLINE) require that separate royalty agreements be made with producers of materials included in these databases, e.g., Chemical Abstracts Service (CAS), BioSciences Information Service (BIOSIS), and the American Society of Hospital Pharmacists (ASHP).

b. If applicable, Licensee will take appropriate steps to advise users that certain portions of NLM's databases are copyrighted. Users shall be solely responsible for compliance with copyright restrictions.

c. NLM assumes no responsibility nor liability associated with the Licensee's (or any user of the Licensee) use and/or reproduction of copyrighted material. Anyone contemplating reproducing a portion of any of the NLM databases should consult legal counsel.

4. Liabilities and Warranties

a. The Licensee agrees to hold the U. S. Government free from liability resulting from:

1) The Licensee's misconduct for any action relating to the activities or operation of the Licensee or its agents.

2) Errors in data or tapes provided by the U. S. Government. (However, NLM will supply replacement tapes if tapes are damaged or faulty upon receipt by Licensee provided the NLM is notified in writing within thirty (30) days after the shipment from NLM.)

b. The Licensee will inform its users in writing that:

"NLM represents that the data provided under the license agreement were formulated with a reasonable standard of care. Except for this representation and as otherwise specifically provided in this Agreement, NLM makes no representation or warranties, expressed or implied. This includes but is not limited to any implied warranty of merchantability or fitness for a particular purpose, with respect to the databases and NLM specifically disclaims all such warranties and representations."

c. The Licensee assumes full responsibility for all costs associated with access to and use, preparation, maintenance, and operation of the NLM's databases.

d. Licensee shall not be required to exercise surveillance of customer use of any material delivered pursuant to its operation under this agreement.

Tape License Agreement-Domestic or Foreign Tape Center Serving Domestic or Foreign Users

5. Restrictions on Duplication, Distribution, and Use of Machine-Readable Copies of NLM Databases

Unless specifically authorized in writing by the NLM:

a. The Licensee agrees to prevent duplication, resale, and redistribution of all or portions of the databases supplied in machine-readable form by NLM, except as specified in b.1) below.

b. Licensee may issue the following notice regarding downloading and subsequent re-use of portions of NLM databases excluding TOXLINE and its Backfiles or CHEMLINE (where downloading is not permissible without clearance from database suppliers) obtained from its computer system:

   1) Data obtained by downloading portions of an NLM database (i.e., retrieving portions of an NLM database online for subsequent storage or re-use) for "personal" use may be retained in machine-readable form.

   2) Data obtained from NLM databases may be consolidated with other files by the Licensee or users of Licensee's service. However, indication of NLM as the source of the data must be kept in the records.

   3) All copyright constraints as included in Item 3 of this Agreement along with all statements of Liabilities and Warranties as included in Item 4 of this Agreement will apply to downloaded portions of NLM databases.

c. The Licensee is authorized to provide information services and/or products resulting from the use of NLM databases to users in the United States, its Territories or Possessions and to users in countries outside the United States:

   1) The NLM has determined that the Office of Export Administration (OEA), International Trade Administration, United States Department of Commerce, allows users from Soviet Bloc countries and the People's Republic of China online access to NLM databases maintained in countries outside of the United States. NLM data is exportable to all destinations, including the Soviet Union, without prior OEA approval under General License General Technical Data Available (GTDA).

Tape License Agreement-Domestic or Foreign Tape Center Serving Domestic or Foreign Users

2) Provision of NLM databases in whole or in part to users from Soviet Bloc countries and the People's Republic of China via online access from Licensees with computer systems located in the United States is, however, prohibited by the OEA unless such requests are cleared with OEA to assure that sensitive technology is not inadvertently transferred to the detriment of U.S. security interests.

6. Licensing

NLM databases or portions of NLM databases will be licensed solely by NLM or its authorized contractual agent(s).

7. Licensing Fees

Licensing fees for NLM databases are prescribed in the Pricing Schedule. All fees will be processed through the National Technical Information Service (NTIS), U.S. Department of Commerce, accounting system.

8. Pricing

a. Pricing schedules will be issued whenever changed and sent to the representative designated by the Licensee. Pricing changes will become effective after 90 days written notice.

b. MEDLARS generation costs are currently funded by Congressional appropriation and therefore are supported by the U.S. taxpayer. It is the opinion of the NLM Board of Regents that foreign users should contribute to the cost of database creation proportionate to the amount of foreign usage. Therefore, a surcharge has been added to the existing charges for all foreign users. This surcharge for foreign users' access applies whether the access is provided by domestic tape Licensees or foreign tape Licensees. See Pricing Schedule for price information.

9. Third Parties

If the Licensee engages a third party to reformat or process the machine-readable data received from NLM, the Licensee's agreement with that third party must be reviewed and authorized by the NLM. This license is limited to one operational site. Operation in more than one site may be subject to additional license fees.

10. Maintenance of Records

a. Some index terms in records using NLM's controlled vocabulary, Medical Subject Headings (MeSH), may become obsolete after each year. NLM makes available the changes in the vocabulary in the annual issue of the Medical Subject Headings, Annotated Alphabetic List, for sale annually from the National Technical Information Service.

Complete, class-maintained copies of MEDLINE and its Backfiles are available annually from the NLM or alternatively, tapes containing only those records touched and changed by NLM can be supplied. There is an additional charge to receive the class-maintained data annually via either method (see Pricing Schedule). Licensee is required to maintain (correct) all MEDLINE and Backfile records within three (3) months of receipt of these records regardless of which method above is selected.

b. As part of the licensing of MEDLINE and its Backfiles, monthly tapes containing individually maintained (corrected) records will be sent automatically. Licensee is required to maintain (correct) all MEDLINE and Backfile records within three (3) months of receipt of these maintained records.

11. Changes in the System

NLM reserves the right to change the types and formats of the machine-readable data licensed under this Agreement. NLM shall notify the Licensee in writing in advance of any changes planned for the machine-readable formats delivered pursuant to this Agreement. Should changes occur, the Licensee shall have the right to terminate the License Agreement at the time the change is instituted. In the event that the Licensee wishes to cancel this license under conditions described in this paragraph, the Licensee must notify the NLM in writing by registered mail in advance of the scheduled change.

12. Transferability of License

NLM agrees that, with prior NLM approval, the Licensee may transfer this license to a successor that has acquired substantially all of its business or of the particular product line for which this license has been entered into by the Licensee. Succession shall include but not be limited to acquisition, merger, change of corporate name, or change in the make up, organization or identity of the Licensee. The transfer shall also be subject to all the conditions stated in this Agreement.

Tape License Agreement-Domestic or Foreign Tape Center Serving Domestic or Foreign Users

13. User Reports

Monthly reports must be submitted to the NLM specifying the connect hours and the citations printed offline for each month of the calendar year for all databases with usage and offline citation charges. These reports should be sent within 30 days after the end of each month to the Associate Director for Library Operations, NLM. All usage reports submitted by the Licensee are subject to an audit at the request of the NLM. Invoicing by the National Technical Information Service will generally be done on a quarterly basis for all files, but may be more or less frequent as NTIS determines necessary to assure prompt collection of fees.

Designated Representative

14. The Licensee shall designate a representative responsible for the administration of this agreement.

15. Amendments

This License Agreement and its attachments constitute the entire understanding between NLM and the Licensee and no modification or amendment of this license (including changes in fee charges) thereof shall be binding upon either party unless it shall be published in the *NLM Technical Bulletin*, or unless it is mutually agreed in writing by both sides. A copy of the *NLM Technical Bulletin* shall be sent to the designated representative monthly.

For
(Licensee)

____
(Signature; type name and
title below)

____
Date

For
(National Library of Medicine)

____
Lois Ann Colaianni
Associate Director
Library Operations

____
Date

Designation of Licensee Representative:

Name: ______________________

Title ______________________

Address: ______________________

____

Telephone Number: (   ) ____________

APPENDIX 3.—LETTER TO CHAIRMAN GLENN ENGLISH, GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE SUBCOMMITTEE FROM DEPUTY SECRETARY OF COMMERCE, DATED OCTOBER 28, 1985, COMMENTING ON THE GENERAL ACCOUNTING OFFICE REPORT "PATENT AND TRADEMARK OFFICE NEEDS TO BETTER MANAGE AUTOMATION OF ITS TRADEMARK OPERATIONS"

THE DEPUTY SECRETARY OF COMMERCE
Washington, D.C. 20230

OCT 28 1985

Honorable Glenn English
Chairman, Subcommittee on Government
  Information, Justice and Agriculture
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Glenn,

This is to inform you of the actions the Department has taken in response to the General Accounting Office's (GAO) report to the Chairman, Committee on Government Operations, House of Representatives, titled "Patent and Trademark Office Needs to Better Manage Automation of its Trademark Operations."

Because of the importance of the Patent and Trademark Office (PTO) automation effort, we conducted several reviews of our own:

- A dual purpose analysis was initiated in June, the first part of which addressed the management of the project by both PTO and the Office of the Secretary. This review resulted in 21 recommendations for improving internal PTO project management as well as strengthening Departmental oversight of the entire automation effort.
- The second part of the review involved an analysis of the trademark automation effort by the Institute for Computer Sciences and Technology (ICST) at the National Bureau of Standards. This resulted in eight recommendations addressing technical aspects of trademark automation.
- This technical review was subsequently expanded to include an analysis of the patent automation effort. That study, completed by ICST in late September, has eight recommendations for improving the technical management of patent automation.

Recognizing that certain shortcomings existed, we developed, in conjunction with PTO, an Implementation Plan assigning responsibility for each of the 37 recommendations to appropriate PTO and Departmental officials. The Plan includes key milestones for required activities. They are being actively monitored by the Office of the Secretary.

Copies of these three reviews and the Implementation Plan are enclosed.

We are currently conducting a detailed review of the procurement issues connected with the activities of Planning Research Corporation, the prime contractor for the patent automation project. This review is scheduled to be completed by December 1985, and its results will be incorporated into our Implementation Plan.

Although our reviews were much broader in scope than the GAO study, we have addressed all the issues raised in the report. This is illustrated by the enclosed chart showing the relationship between the GAO recommendations and our own.

Patent Office automation is an important long-range goal of this Department and one of the largest and most unique systems efforts in the Federal Government. While both the GAO and our reviews found some problems, the overall direction and planning of this project are sound. The changes being instituted as a result of these reviews will further strengthen project management, and ensure proper Office of the Secretary involvement.

Our 1982 goal of automating patent and trademark activities to reduce pendency and improve quality is achievable. I look forward to working with you and your staff to ensure that it is realized on time. If you feel it would be beneficial, I would be pleased to discuss these studies with you in more detail.

Sincerely,

Clarence J. Brown

Enclosures

BEST COPY AVAILABLE

APPENDIX 4.—QUESTIONS FROM THE SUBCOMMITTEE TO DAVID PEYTON, DIRECTOR, GOVERNMENT RELATIONS, INFORMATION INDUSTRY ASSOCIATION, WITH LETTER RESPONSE DATED JUNE 17, 1985

QUESTIONS FOR THE INFORMATION INDUSTRY ASSOCIATION

1. Please provide a description of currently available on-line data bases that provide services that EDGAR will provide. Please identify the company offering the service and the nature of the information available as specifically as possible.

2. For each of the information services identified in response to question 1, please provide the number of customers and the annual revenues. If this information is not available for each company or service, please provide aggregate data.

3. Given the investment that the EDGAR contractor will be required to make, can you estimate the cash flow that the contractor will need during the life of the EDGAR contract?

4. The costs of supporting a data base service include the cost of acquiring and maintaining the data and the cost of the communication services used to connect with users. For an on-line data base service, what percentage of revenues typically are needed to pay the communications costs?

5. At the hearing, Mr. Peyton mentioned a conference that addressed business failures in the information industry. Can IIA supply more information on this subject, including specifics on services that have been offered and failed to find a market?

6. In his comments on user charges for information products and services, Mr. Duncan indicated that IIA supports a definition of cost that includes "all costs incurred in the development, production and dissemination of the particular information product."

   a. Under what circumstances should federal agencies charge users full costs?

   b. It appears that IIA supports "full cost" pricing at the National Library of Medicine. Does IIA also support charging full costs to users of data disseminated by the Census Bureau, and the Bureau of Labor Statistics?

   c. Mr. Duncan's statement indicates that the government should not offer "commercial information products and services." What are "commercial information products and services"?

7. Does IIA support the Federal Depository Library program?

Information Industry Association
316 Pennsylvania Avenue, S.E., Suite 400
Washington, D.C. 20003
202/544-1969
Cable: INFORMASSN WASHINGTON

June 17, 1985

The Honorable Glenn English
Chairman
Subcommittee on Government Information,
Justice, and Agriculture
B-349-C Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman English:

The Information Industry Association appreciates your continuing interest in electronic filing. In response to your letter of May 15, we offer the following answers to your seven questions.

1. We have assembled and enclosed a chart describing many of the principal private-sector online databases in the area of securities and financial data. Please note that the enormous array of current offerings precludes us from an exhaustive presentation. We have also enclosed a copy of the cover story from Forbes magazine of May 6, 1985, entitled "Electronic Investing: Just Another Computer Game?," as alluded to by Mr. Willard in our testimony on April 29. In addition, we have included copies of chapters 18 and 19 from the reference work Databasics. If you wish to include these enclosures in the printed hearing record, you would naturally need to obtain the permission of the copyright holders.

2. Unfortunately, we were not able to research the customer use and revenue figures you asked for in the time available. In any event, some of that information is proprietary and closely held. To our knowledge, the most complete information available on this subject in the U.S. is the multiclient service offered by an IIA member, Information Market Indicators, R.R. 1, Box 194, Monticello, IL 61856 (217/762-8681). You may wish to contact Martha Williams, President, for further information.

3. Not being corporate database vendors ourselves here on the Association staff, we had to rely on our members for estimates of the cash flow required by an EDGAR contractor. However, given the uncertainty about the magnitude of the initial investment, none of our members was able to make a solid estimate.

4. To gauge the relative importance of telecommunications costs for online database vendors, we contacted LINK Resources, a member firm specializing in proprietary studies of electronic publishing. Their information is that the telecommunications component of costs is so variable that no meaningful generalizations are possible. We can say, however, that the rapid updating of financial data will create above-average telecommunications costs for securities-related databases.

5. Relative to the question of business failures, we have included a copy of the IIA publication, How to Succeed in the Electronic Information Marketplace. Pages 85-108 should be of the greatest interest to you. We freely grant permission to include this material in the Committee print and request that it bear the legend, "Reprinted from How to Succeed in the Electronic Information Marketplace, copyright (c) 1984, Information Industry Association. Reprinted by permission.".

6. You asked a three-part question on full-cost pricing for user charges.

a. We believe that agencies should recover full costs — in the sense of logically attributable costs — where there is no determination by Congress, as a matter of democratic or social policy, that users should be served through appropriations from taxes. We find the basic criterion in OMB Circular A-25 on user charges appropriate: where there exist identifiable private benefits aside from any general public benefit, agencies should recover costs.

The Census Bureau and the Bureau of Labor Statistics perform unique functions not replicated, or replicatable, in the private sector. We would scarcely assert that BLS should charge a full-cost price for its basic monthly press releases, for example. Our understanding of the statistical agencies is that they provide the base-level data which undergirds an enormous number of calculations and value-added endeavors which can, or should, occur only in the private sector. While we cannot go into a product-by-product analysis of the Census Bureau's outputs here, we tend to believe that some of them, especially in machine-readable form, serve a more specialized rather than general informative function. To the extent that is true, cost recovery is called for.

We would distinguish these agencies, in some degree, from NLM, which, as a matter of policy, chooses to engage in secondary biomedical publishing in competition with taxpaying private companies over which it enjoys no comparative advantage. In this case we have called for full-cost pricing as long as NLM remains a commercial database vendor. Our more basic point in this case, however, is that private industry has developed to the point where NLM should withdraw and redirect its efforts towards research and development not being undertaken in the private sector.

c. Mr. Duncan meant to refer to information products and services with known or established private markets, for which the electronic publishing of biomedical abstracts and indices is, again, a good example. Our basic position is this: except where information is an essential part of the functioning of democracy or otherwise serves a programmatic social policy purpose, private industry is better organized to identify and meet the needs of users through the interactive market mechanism. Whenever an information service can be operated on a self-sustaining basis, then it can and should be offered by private, rather than government, enterprise.

7. The IIA, on a variety of occasions, has indicated its support for the partnership between the Federal Government and libraries as a way of reaching citizens. Yes, we support the concept of the Federal Depository Library Program without necessarily endorsing all aspects of its programmatic structure.

We hope that you will find the answers we were able to give useful. Your questions were searching ones and tested the limits of our knowledge.

Yours truly,

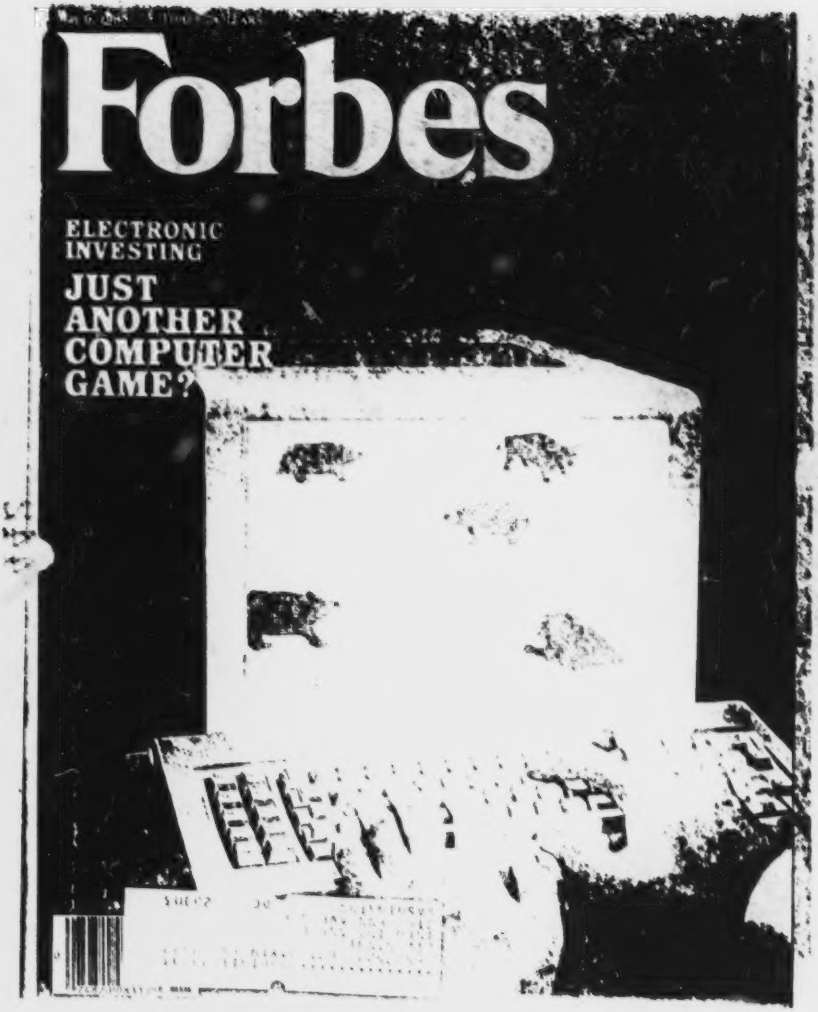
David Peyton

David Peyton
Director, Government Relations

DP:daw
Enclosures (4)

Database Producer	Database Name	Approx. Amt. of Data From SEC Filings	Approx. No. of Public Companies	Database Vendors Offering Access	Comments
Disclosure Information Group	Disclosure II	95%	10,400	ADP, BAI Innerline, CDC, CompuServe DataStar, DIALOG, Dow Jones, I.P. Sharp, ISYS, Mead, Quotron Savant, VU/TEXT, Warner	Extracts of key factual and financial data from SEC filings; Non-SEC data includes Ticker Symbol, CUSIP Number, Duns Number, Disclosure Company Number, price/earnings data, etc.
Disclosure Information Group	Company Filing Index	95%	116,000	Disclosure	Lists by company all documents filed with the SEC since 1966; Non-SEC data as above
Standard & Poor's Corp. COMPUSTAT Services, Inc.	COMPUSTAT II		6,000	ADP, Boeing, Chase/IDC, CitiShare CompuServe, DRI, Fact Set, MDS Warner	Detailed financial records for as much as 20 years; significant analytical software
Value Line, Inc. Value Line Data Services	Value Line Data Base II Main File Small Company File		1,650 800	Chase/IDC, CompuServe, DRI GEISCO, ISYS, Shaw, Sigon	Detailed financial records on the most heavily traded companies; Non-SEC data includes projections by staff analysts as well as stock pricing
Computer Directions Advisors, Inc.	Spectrum Ownership Profiles Disclosure/Spectrum Ownership	90%	6,000	CDA, GTE Telenet (as Spectrum), DIALOG, CompuServe, Quotron (as Disclosure/Spectrum)	Ownership of stock, including 5% owners, officers and directors, and institutions; Non-SEC data includes Ticker Symbol, CUSIP Number, Disclosure Company Number and stock pricing
Mead Data Central	Exchange		1,500	Mead	Full text, including financial data, of 10-K's and 10-Q's for selected companies; Non-SEC data includes analysts reports from brokerage, investment banking and research firms
Predicasts	PTS Annual Reports Abstracts	70%	4,500	BRS, DIALOG	Abstracts from Annual Reports of all NYSE, ASE and the most actively traded OTC's, including some financial data
Dun & Bradstreet Corp. Dun's Marketing Services	DunSprint	1%	25,000	Dun & Bradstreet	A small percentage of the 6 million Business Information reports represent branches or affiliates of public companies; most information is prepared by D&B credit reporters based on information supplied by the companies or their banks and creditors, although documents such as Annual Reports, 10-K's and 10-Q's are used to supplement privately collected data on the public companies

Database Producer	Database Name	Approx. Amt. of Data From SEC Filings	Approx. No. of Public Companies	Database Vendors Offering Access	Comments
Dun & Bradstreet Corp. Dun's Marketing Services	Dunsquest or Dun's Financial Profiles	1%	25,000	Dun & Bradstreet	Balance sheets, income statements and key ratio's for 1.2 million companies, some of which are branches or affiliates of public companies; most information is derived from D&B Business Information Reports
Dun & Bradstreet Corp. Dun's Marketing Services	Dun's Market Identifiers	1%	25,000	DIALOG	Some of the 1.5 million company records represent branches or affiliates of public companies; includes information derived from D&B Business Information Reports as well as additional original research
TRW Information Services Division	TRW Business Credit Profile		25,000	TRW Information Services, NewsNet	Detailed credit histories of credit data on over 8 million business locations, including branches and affiliates of public companies; general business and financial data on public companies is supplied by Standard & Poor's (see above); until recently the file was restricted to some firm credit executives
Media General Financial Services, Inc.	Media General Databank		4,300	DIALOG	Provides balance sheets and income statements for all NYSE, ASE, NASDAQ national market companies, and selected OTC's; Non-SEC data includes ratios, indexes and stock pricing
Dun & Bradstreet Corp. Moody's Investors Service, Inc.	Moody's Corporate Profiles		3,600	DIALOG	Provides data on all NYSE, AMS and the 1100 most actively traded OTC companies; data is from SEC filings, press releases and other public documents; Non-SEC data elements include Moody's Number, Dun's Number, Ticker Symbol, and comments from Moody's editors as well as various Moody's ratios
Control Data Corporation Trinet, Inc.	TRINET (non-manufacturing) TRINET (manufacturing)			CDC, DIALOG	Both files include data on branches and affiliates of public companies; Non-SEC data includes market share and Trinet number; formerly called Economic Information Systems (EIS)


Forbes
ELECTRONIC INVESTING
JUST ANOTHER COMPUTER GAME?

Personal Affairs

Edited by William G. Flanagan

The personal computer won't make you a better stock picker, but it can give you a lot of information fairly fast. How well you use it depends on you.

The electronic edge

By Janet Bamford

How's this for a Perfect Squelch?

Your broker calls, pitching a stock you've never heard of. You hear phrases like "unique opportunity" and "hold until it doubles." Meanwhile, you're wondering if this is the firm's special of the day or if the broker is late on his Ferrari payments.

But instead of listening passively to your broker's polished spiel, you turn to your personal computer and tap through to your favorite database. "I don't feel very good about that one, Joe," you say. "The stock's already trading near its 52-week high, and earnings estimates were revised downward just last week. The price/earnings ratio is sky-high, compared with other companies in the same industry. Besides, I see that the entire board of directors has the same last name. It just doesn't sound like something I'm interested in."

Superior gamesmanship? Sure. But a lot more. Electronic investing is an idea whose time has almost come. In the ten years since May Day, when fixed brokerage commissions died and discount brokerage took off, microcomputers and stock market databases—and the software programs to manipulate them—have proliferated. Major discounters like Charles Schwab and Fidelity Brokerage Services make it even more compelling for investors to go electronic by offering computerized trading. With a personal computer you can tie into a discounter 24 hours a day, seven days a week, and place buy and sell orders at any time. As an added sweetener, some brokers also sell databases at cut rates.

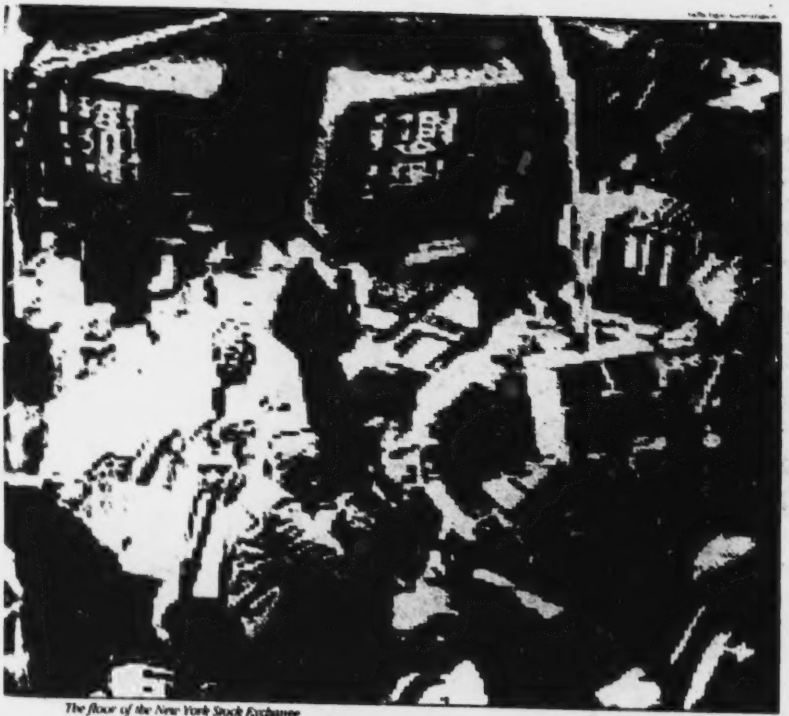
The number of takers is at that fascinating point on the growth curve: too big to be ignored but still small enough to lull the complacent. Link Resources, a New York City market research firm, surveyed a sample of the 8.7 million U.S. households owning computers and found that 10% are tapping into databases for all kinds of information—including investment data. Another 17% said they are interested in doing so by year-end. Of those polled, 7% said they were specifically interested in using their computers for financial transactions, including stock trading.

There are other signposts: The American Association of Individual Investors set up a computer investing group 2½ years ago. It now counts 20,000 members. Less than a year ago there were eight regional groups in the U.S. Today there are nearly three times that number.

What do electronic investors use their computers for? And should you get in on it? Probably.

The basic bookkeeping chores—keeping track of the value of your portfolio, noting the current tax status of your stocks, alerting you when dividends are due, measuring your portfolio's performance against the Dow or some other index—are now pedestrian stuff. (Some investors swear that function alone makes the cost of their computers well worth it.) Investors went on from there to use

Checking the portfolio
Watch the line charges.



The floor of the New York Stock Exchange
A video computer enhanced the original photo. The technique is called pixelation.

the computer for technical analysis. The mathematical calculations and endless charting by which technical analysts track statistical trends, looking for buy and sell signals, make the job a natural for computers.

But recently, with so much additional information available from various databanks, even once-timid souls have been able to use computers for solid, fundamental analysis.

Dow Jones News/Retrieval, for example, pools several different information banks to provide subscribers with news reports, current and historical stock quotes, fundamental data on over 4,000 companies, information from public filings (including 10-Ks), news of tender offers, extracts from proxy statements on 9,400 public companies, and highlights of weekly analyst investment research.

The stuff of yesterday's futurist fancies is now commonplace fact for tens of thousands of investors with a personal computer, a modem and a telephone. Thinking of buying stock in Exxon? They are getting news on Exxon that came across Dow Jones' news service as recently as 90 seconds before, as far back as three months. The oil industry? They are calling up the headlines on just that group.

Dow Jones has plenty of competition, too. CompuServe, an information utility based in Columbus, Ohio, offers Standard & Poor's analyses, a Value Line database, historical stock price quotes and volumes back to 1974. Another competitor, Source Telecomputing Corp., can serve up Media General stock analyses and abstracts from leading business periodicals, as well as research reports from 38 brokerage firms. Warner Computer Systems offers current prices for 16,000 corporate bonds and certain municipal bonds, consensus earnings forecasts for 3,000 companies and fundamental information on 6,000 companies dating back 20 years.

Then there are off-line databases, which come to you in the form of disks, mailed every month or so. Prod-

Personal Affairs

ucts like Standard & Poor's Stockpak II and Value Line's Value/Screen allow you to search for a group of stocks that might fit whatever criteria you choose. Interested in companies with a price/earnings ratio under 10 that have a five-year earnings-per-share growth record of 20%? Bingo.

Will such tools make you a match for a professional money manager? No, but they will put the smart amateur and the average professional on more even ground.

"Even if you subscribe to Value Line, it's difficult to go through and read about 1,700 different stocks," says Norm Nicholson, the editor of the *Computerized Investing* newsletter, published by the American Association of Individual Investors. "But with a stock screening program you can do the kind of analysis that has been done by money managers and portfolio managers for years.

"The only advantage brokerage firms have is the information an analyst gets when he calls or visits the corporate treasurer," says Nicholson. You can often get the same analysts' reports on line, he notes, soon after the broker's institutional clients.

Fine. You have the whole world at your fingertips. Now what?

If the next question is, can all of these data, and state-of-the-art software and hardware, really give you an edge in the market, the answer is certainly no. Stock-picking is an art. As in any art, though, performance improves if the artist has good tools.

There is a better—or at least a more realistic—question. Can the hardware and software now available put you on the same starting line as most others in the market? The answer is yes, if you do it right.

David Hall, 42, a retired Control Data executive, has no doubt that his Zenith IBM-compatible computer has earned its keep. On a recent morning Hall checked in on the market, as he does two or three times daily when trading options. He found from the real-time quotes he gets (no 15-minute delay) that Teledyne had dropped 5 points. He was holding put options in the stock and had been showing a $2,000 paper loss. He sold the options and turned a $2,000 loss into a $3,000 gain. "I paid for all the computer services I could possibly use this month with that," says Hall. "If I had waited to read the newspaper, I could have missed it."

Options player Robert Goff and friend [illegible] instead of on line.

John Zaroslinski, a retired vice president of research at a Chicago health supply company, augments his broker's ideas with his own research. Zaroslinski has used Value/Screen, Value Line's stock screening program, to identify stocks he might be interested in. Because he is familiar with the industry, Zaroslinski watches health care companies. "I like to see a company whose percentage growth is perhaps twice the price/earnings ratio. I bought Genovese Drugs at around 11, and it is up to 13½."

Sometimes microcomputers can earn their keep by virtually forcing investors to do their homework—since it is a lot easier to do electronically. Consider David Hall's Saturday morning routine. He turns on the computer and checks Dow Jones News/Retrieval to see if he has missed any news in the industries he follows. Hall also looks into specific stocks. "If I've seen something in *Barron's* that morning that interests me, I can go from never having heard of a stock to having a fairly good understanding of the basics of the company and the stock performance within a half hour," he says. He checks other

Tools for heavy hitters

Serious individual traders, thanks to breakthroughs in technology, have their best shot ever at getting on the same starting line with the pros. Whether at home or on the racquet ball court, they can now get market information previously available only on professional-level systems costing thousands of dollars more. Below, some state-of-the-art hardware and software for heavy hitters.

On the move

The Pocket Quote Pro ($395), a hand-held FM sideband receiver from Telemet America, Inc. of Alexandria, Va. that monitors up to 160 preselected stocks (expandable to 320). For another $49 for the Pro Connection and $89 for Personal Gains software, you can interface the Pocket Quote Pro with your IBM or IBM-compatible personal computer. The Pocket Quote can download data into any electronic spreadsheet that accepts Data Interchange Format (DIF) files. The annual subscription fee for all stocks (except the two smaller Nasdaq lists), options and commodities is $299. For real-time quotes, instead of the 15-minute delay, you must also pay extra exchange fees, which range from $24 a year for options to $720 a year for Chicago Board of Trade futures. In addition, you can subscribe to UPI business news bulletins for $120 a year and Accu-Weather forecasts for $24 a year. Telemet America currently broadcasts in 14 cities and plans to add 3 to 4 more by summer.

Pocket Quote Pro monitors stocks via FM radio

The Quotrek ($399.95) by Dataspeed, out of San Mateo, Calif.; monitors common stocks on the major exchanges, most futures exchanges and stock options. The annual subscription fee is $360 a year for one exchange and $120 for each additional exchange. Options quotes will cost you another $240 annually. Since Dataspeed offers only real-time rather than 15-minute-delayed prices, additional exchange fees are also required. The Quotrek, unlike the Pocket Quote, does not signal when there is news on a stock in your portfolio. However, you can tune in any Quotrek in any city in which the service is offered. The Pocket Quote, with its locked-in tuning, can be used in only one specific city as is; a special $50 module gives you some extra flexibility.

For den or office

The Radio Exchange ($279). If portability isn't important, there's Telemet America's Radio Exchange, which feeds data directly into a personal computer. Radio Exchange will monitor 328 issues (a cheaper version, at $199, can monitor 72 issues), and it can interface directly with Lotus' 1-2-3 and Symphony.

The Modio ($549.95). Since the Quotrek cannot be interfaced with a personal computer, Dataspeed came up with the Modio, which can dump 250 issues into memory and allow you to view 18 at a time. As with the Pocket Quote Pro and Radio Exchange, you can set limit alerts with it. Subscription cost: $960 a year for professional use, $600 for nonprofessional use.

Satellite services

For more information at often faster speeds, a satellite dish can be placed on your roof or in your office or home window—provided there's a clear shot toward the satellite. But note: Satellite dishes can't receive in some crowded urban environments, so most such services also use alternate delivery systems, such as telephone lines or sideband FM.

PC Quote. For under $300 a month plus exchange fees, Chicago-based PC Quote will set you up with a yearly subscription, rental satellite dish and decoder. PC Quote's installation fee for a roof or outdoor antenna generally runs around $500.

The PC Quote service delivers detailed trade-by-trade information on from 700 to more than 20,000 stocks, options and commodities. An extra-cost PC Quote option is a small spreadsheet that continually updates your portfolio.

MiRateFinder. Security Pacific Market Information, a subsidiary of Security Pacific Corp., offers MiRateFinder, with real-time quotes and rates on money markets, government securities, foreign currency exchange, metals and futures. It can be delivered by satellite or FM sideband. Users can build up a historical database and do sophisticated charting and graphing. Software is available for running MiRateFinder on IBM PCs, compatibles or Security Pacific Market Information's microprocessors. MiRateFinder starts at $290 a month and goes to $1,500.

The Analyst. Commodity News Services of Knight-Ridder Business Information Systems delivers the Analyst, a commodity futures pricing service, by satellite or telephone. In addition, Analyst provides news bulletins on commodities. The service starts at $325 for those with their own PC equipment and software and runs up to about $750 a month for the top-of-the-line service with equipment leased from Commodity News. Exchange fees are additional.

Satellite-receiving systems are too expensive for the average investor. But heavy hitters will gauge their cost against the proceeds of a timely trade.—Steve Kichen

Personal Affairs

databases as well: Media General to see how the stock has done compared with others in its industry; Disclosure, for the company's latest SEC filings; and Zacks earnings estimates.

"I'm not motivated enough to do this at the library, so this isn't merely making something easier. I wouldn't have done it," says Hall. His research has paid off—especially in bolstering his confidence to hold good stocks in bad times. "I analyzed the food industry and decided Wendy's was a good buy. I bought it at 17. The price started to drop, so I continued to check on it, and I could see everything was still

How to get access to the electronic libraries

There are now dozens of databases that even a modest investor can afford. Below, a sample of some of the largest and best known.

Watch for the extra charges sometimes associated with databases: additional fees for specific reports, telecommunications network charges. Operating during evenings or on weekends is the easiest way to save. Charles Schwab, for instance, estimates that during non-prime-time hours it costs about 40 cents to update the stock prices of 15 securities and about $3.00 to receive a full report on a company. One suggestion for keeping costs down: Check to see if a database will let you periodically monitor the bills you are running up.

Two sources for more information on databases: the American Association of Individual Investors (612 N. Michigan Ave., Suite 317, Chicago, Ill. 60611) and the American Association of Microcomputer Investors (P.O. Box 1384, Princeton, N.J. 08542).—J.B.

Service/hours*	Securities quotes†	Selected features and fees‡	On-line trading capacity	Fees**
CompuServe (H&R Block) PO Box 20212 5000 Arlington Centre Blvd Columbus, Ohio 43220 800-848-8199 614-457-0802 (Ohio) P: M-F 8am-6pm	P: $0.10 each NP: $0.02 each Historical (addl $0.03-$1.25 each)	Disclosure II (SEC filings, company profiles, addl $2-$10 per co) Disclosure/Spectrum (stock ownership data, addl $13-$34 per co) IBES (earnings estimates, addl $0.50-$2 per co) Standard & Poor's Summary Reports ($0.25 each) Value Line Data Base II (co & industry financial data, addl $0.10-$1.60 per co)	Quick & Reilly Max Ule & Co	Executive Information Service $69.95 initial fee $10 monthly minimum Connect time: P: $0.25/min NP: $0.21/min
Dow Jones News/Retrieval PO Box 300 Princeton, NJ 08540 800-257-5114 609-452-1511 (NJ, Can, Hawaii, Alaska) P: M-F 6am-6pm	Real time (addl $12.50/mo) Historical All quotes: P: $1.80/min NP: $0.30/min	Dow Jones News, Wall St Journal, Barron's P: $2.40/min, NP: $0.40-$2.40/min Disclosure II (P: $5, NP: $2 addl per co) Corporate Earnings Estimator Media General (co & industry financial data) Standard & Poor's Online (profiles 4,600 cos) Data above: P: $2.40/min, NP: $1.80/min	None	Standard membership: $75 initial fee or purchase of Dow Jones software package, all other charges at left
National Computer Network 1929 North Harlem Ave Chicago, Ill 60635 312-622-6666 P: M-F 9am-7pm	Real time (display) $600/mo $0.13/min connect Historical P: $0.16/min NP: $0.20/min connect Addl CPU charges	Media General Market File (price, balance sheet & income data, basic ratios for 4,000 cos) NP: $1.37/min. Not available in prime time. Specialized databases allow users access to analytical programs as well as raw data. Services include OPTDAT (options), COMDAT (commodities), FISCAL (stocks, bonds, mutual funds), Media General (fundamental data and market data for 4,000 cos) Extra central processing unit charges and data storage fees	None	Nite-Line (raw data only) $30-$75 initial fee Connect time: P: $0.42/min NP: $0.25/min For OPTDAT, COMDAT, FISCAL and Media General—Connect time: P: $0.27/min NP: $0.20/min Additional charges apply
Schwab Technology Services (Charles Schwab & Co) 101 Montgomery St San Francisco, Calif 94104 415-627-7000 800-334-4455 P: M-F 6am-6pm	Real time (addl $18.50/mo) Historical All quotes: P: $1.58/min NP: $0.25/min	Dow Jones News: P: $2.04/min, NP: $0.34/min Standard & Poor's MarketScope (market news and commentary $36/yr, $1.80/15 pgs viewed addl) Company Profile Reports (incl co description, income and balance sheet data, stock market data, estimated earnings for over 4,600 companies, $3.50 each co addl) Dow Jones News/Retrieval (all info available except news and quotes) P: $1.58/min, NP: $0.35/min	Charles Schwab	Requires purchase of $199 software package
The Source (Reader's Digest) 1616 Anderson Road McLean, Va 22102 800-336-3366 703-821-6666 (Va) P: M-F 7am-6pm	Real time (addl $20/mo)	Research reports from 36 US and foreign investment banking firms (P: $1.30/min, NP: $0.75/min, per report pg: $4.00. Fees include on-line charges.) Media General Stockvue (fundamental data on 3,100 cos) P: $0.75/min, NP: $0.68/min addl Portfolio management features Access to various news services	Spear Securities	$49.95 initial fee Connect time: P: $0.43 min NP: $0.18/min $10 monthly minimum
Warner Computer Systems 1 University Plaza Suite 300 Hackensack, NJ 07601 800-626-4634 P: M-F 8am-6pm	Historical P: $3/min NP: $1.20/min	Exchange Master (pricing, dividend, earnings data on over 20,000 securities for last 10 yrs) Disclosure II (addl $1.50-$3 per co or $0.10 per item) Options, municipal bonds, corporate bonds Financial data on 16,000-20,000 cos	None	$48 initial fee Connect time: P: $1.70/min NP: $0.60/min

*P: Prime time. NP: Nonprime time. Nonprime includes weeknights, weekends, holidays. †Each has delayed quotes. ‡Except where noted, fees in addition to connect time charges. **Fees in per-minute charges. Some bill by hour or second and give volume discounts. All rates for 1200 baud modem; 300 baud may be lower.

Retired executive David Hall
Sell Teledyne, hold on to Wendy's.

fundamentally strong. Now it's split; I have 30% more stock, and it's trading at 17½," says Hall.

Electronic investing has its dangers. Like buying a Porsche that seduces you to drive too fast, having instant access to market information can tempt you to trade stocks too quickly.

Also, it's easy to ascribe too many powers to your personal computer, because it can access and manipulate data so quickly. Some software suppliers prey on investors who expect too much. "You'll learn how to win in both bull and bear markets," touts an ad by Summa Technologies, maker of Winning on Wall Street, a technical analysis program.

"We try to keep people from thinking that the computer per se is going to lead to profitability. It makes available the theories and techniques that have always been around, but which now can be put to use instantaneously," says Norm Nicholson.

Nicholson recently tested a technical analysis system that claims to signal when to buy or sell stock. He ran a computer test on a simple moving average system, in which the investor would buy (or sell) on the Dow Jones 65 Stock Index if the daily price line crossed a moving average on the upswing (or downswing). Over the six-month period he tracked the system, it did seem to generate profits. A foolproof system? Not quite. When even a low commission was figured into the equation (0.5%, or $50 on a $10,000 trade), at no time was a profit realized. "It's helpful to know that IBM tends to outperform the market in both up and down markets," says Nicholson, "but I warn people against relying on buy and sell signals."

And there is the price. A setup in your den is probably going to run $3,000 for the computer and the peripherals. Software programs run anywhere from $10 to hundreds of dollars. Database prices are not as high as you might think *(see table)*, or at least they can be controlled by tapping in only after hours. "I can go on line during the day and within ten minutes know everything there is to know about a stock for $8 to $10. At night it would be $3 to $5," says Tom Meyers, president of the American Association of Microcomputer Investors and an active options trader. "It's a small price, considering your commissions and how much money you might be putting into something."

But Robert Goff, a Reno, Nev. computer salesman, is a good example of what can happen when an investor forgets to keep an eye on the clock. To help with his options trading, he hooked up to The Source and ran up hefty bills before he became familiar with the service. "I dropped it right then and there," says Goff. Now he orders Quicktrieve diskettes of options data through the mail.

Should you plug in? Generally speaking, the less active you are, the less it makes sense to go electronic. But for those who devote a fair amount of time to stock trading and who enjoy the game, a computer can put a lot of information at your fingertips. Whether that information will be helpful will depend more on how you use it than on how powerful your computer may be. ■

Stock data by the satellite dishful
Narrowing the professional's edge.

APPENDIX 5.—LETTER TO CHAIRMAN GLENN ENGLISH, GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE SUBCOMMITTEE, FROM GLENN P. HANEY, DIRECTOR, OFFICE OF INFORMATION RESOURCES MANAGEMENT, U.S. DEPARTMENT OF AGRICULTURE, DATED AUGUST 9, 1985, WITH RESPONSES TO QUESTIONS SUBMITTED SUBSEQUENT TO THE HEARING

United States
Department of
Agriculture

Office of
the Secretary

Office of
Information Resources
Management

Washington, D.C.
20250

AUG 9 1985

The Honorable Glenn English
The House of Representatives
Chairman, Government Information, Justice,
 and Agriculture Subcommittee of the
 Committee on Government Operations
B-349-C Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman English:

Attached are my responses to the questions you sent me following my testimony before your Subcommittee. I appreciated the opportunity to appear before your Subcommittee to discuss our EDI project.

Please feel free to contact me if you have any further questions.

Sincerely,

Glenn P Haney

GLENN P. HANEY
Director

Attachment

RESPONSE TO QUESTIONS FOR GLENN P. HANEY
DIRECTOR, OFFICE OF INFORMATION RESOURCES MANAGEMENT
DEPARTMENT OF AGRICULTURE

1. The EDI contract between the Agriculture Department and Martin Marietta Data Systems (MMDS) calls for payments to MMDS of $250,000. Please describe what MMDS is providing in exchange for this payment.

USDA had to levy some special requirements on the EDI system that could not be satisfied by any existing software. These were primarily related to the time-sensitive nature of our data. The $250,000 was the negotiated charge for development of the required special software. The following further defines these special requirements:

. Much of the USDA data is collected and needs to be disseminated on a non-scheduled basis. FAS trade leads, for example, need to be made available to potential sellers as soon as the information is received from attaches abroad. News releases go out at any time. AMS market news reports are received from the various reporting locations all day long and must be made available to the user of this data as soon as possible.

To satisfy the need to get our data to those who need it as soon as the data is available, MMDS implemented an auto-dial feature. Organizations contracting to receive data from the EDI system establish an "order list" with MMDS and any time USDA releases a report for dissemination it is automatically transmitted to all who have ordered it through the auto-dial feature. This makes it unnecessary for the users to continually query EDI looking for new data they have not yet received.

The auto-dial feature also satisfied another important requirement. We needed a method to guarantee that all organizations contracting for our data would have equal access to it and would receive it at the same time. The MMDS system is designed to initiate the auto-dial to all requesters at the same time to assure this equal access.

. MMDS also implemented software to support a dedicated line interface for those public users that required this level of service.

. The EDI system is a menu-driven system which is flexible enough to meet requirements of short unstructured releases as well as the much longer formal reports such as those released by ERS and SRS. We required the capability of multi-level menus (up to six levels) to classify the releases for easy search and retrieval. Further, we required that menu headings at each level could be preset or could vary for each report. This special software made it possible to accommodate all our various reports in a single system and made it possible for all our Agencies to participate in the project. In order to best meet requirements of the user community, we felt it was important to have all agencies participate so that USDA data could be acquired from a single source. In the long run, this would be easier and more cost effective for all involved.

. While many of our users have moved to the display-oriented 3270 protocol, we still have many with the less sophisticated TTY devices. We therefore required that software be developed to meet both requirements.

. The Agencies that will be loading data into the EDI system already had various types of equipment that required support. MMDS was required to accept data from various word processors, microcomputers, and minicomputers. We did not want to require Agencies to acquire new equipment just for the EDI system.

. The most significant special communications support was developed for AMS. They currently have a dedicated national leased wire system to collect and disseminate market news reports. The 8A1 protocol and the message formats are not standard. MMDS provided AMS with special conversion software and equipment to interface these two systems without requiring special accommodation in either EDI or the currently operating market news system.

. Additional software features provided by MMDS include ability to load a report for release at a specified later time, ability to delete a report from the system automatically or on command, and ability to support multiple versions of a report.

. The system will also provide us with detailed usage statistics on who acquired what releases and on what day. This information will be important to us in a continuing evaluation of the specific demand for our data on the part of the public.

In addition to the software referenced above, the $250,000 included training for the various types of USDA users, manuals, system cards and brochures.

2. What other payments will the Department be required to make to MMDS during the course of the contract?

The contract with MMDS is for computer use. The Department will, therefore, pay for costs associated with loading our data, storing, and managing it. We will also pay any costs for our own employees to access data on the system.

3. Who owns the software developed in connection with the contract? Will the Department or MMDS have any rights to the software at the completion of the contract? Will the Department acquire title to any hardware under the contract?

The Department owns the software developed in connection with the contract and will retain rights to it at the completion of the contract. The Department will not acquire title to any hardware under this contract.

4. The Food and Drug Administration's dissemination arrangement with Dialcom makes agency information available internally within FDA as well as to outside users. FDA paid nothing for software development and pays only a small fee for its use of the system. Other agencies have been able to

make similar arrangements for electronic dissemination systems. How did the Agriculture Department determine that it was necessary to spend $250,000 for the development of a custom-designed dissemination system? Please be as specific as possible in explaining why it was not possible to use an existing electronic dissemination system.

As specified in our answer to question 1, our requirements could not be met by any of the existing, rather simple, electronic mail systems such as that provided by Dialcom. The Dialcom system could not support our public users but is more oriented toward the end-users with simple low speed terminal query type access. We focused on getting our data, in bulk form, to companies that were already in the dissemination business as quickly and easily as possible and on an equal basis. We specifically avoided the kind of end-user service offered by Dialcom because we would be establishing a service in direct competition with private sector companies already in the information dissemination business. The software required to focus on the "middleman" did not exist.

During the development of this EDI system, we communicated frequently with the companies, such as Agnet and Dialcom, who had a direct concern. They needed absolute assurance that we were not establishing a system that would provide unfair competition to them. We, therefore, felt that it was important that we have total control over the features and the operation of the software. The only way we could be assured of this control was to design the software and pay for it ourselves.

5. Were there any bidders who offered to provide services without asking for a fixed payment from the Department? Why were these bids rejected?

All the bidders responding to our solicitation required payment for the software development.

6. The contract provides that ten percent of MMDS revenues will be credited against the contract price. Mr. Haney testified that: "We anticipate recouping that cost [$250,000] over the life of the contract, but we don't know whether we'll get it in the first year, or the second year, or the third year." Has either the Department or MMDS made any estimates or projections supporting this statement?

It is difficult to estimate how many public users of our system there will be because this broad a dissemination service has never been developed before. We also recognize that it has growth limitations in that we are not attempting to support the ultimate end-user of our data. Another unknown is just how much data any of the public users will acquire. Our best estimate provided to the proposing contractors was that we would have 24 users by the end of the first year of operation and that this would double by the end of the third year. If each of these users contracts only at the minimum level ($150.00 per month), the Department will receive $180.00 per year per user or somewhere between $4,000 and $8,000 per year. Unless the usage far exceeds our current estimates, the Department will not fully recover software development costs during the life of the system which is five years.

7. Where did the idea of the ten percent credit originate? Was it a

requirement imposed by the Department or was it included by the contractor in its proposal?

The ten percent credit originated with MMDS in their proposal. It was not required or suggested by the Department.

8. In evaluating proposals for the EDI contract, how much weight was assigned to the ten percent credit? How much weight was assigned to the price charged to public users of the EDI system?

No weight was specifically assigned to the ten percent credit in evaluating the proposals. Four points out of a total one hundred were assigned to the charging structure for public users referred to as Level 1.

9. Mr. Haney indicated that the revenues credited to the Department were a user fee "to share the costs of making [information] available...." Please identify the specific costs incurred by the Department and related to public use of the EDI system that this "user fee" is supposed to cover?

It may be a misnomer to refer to the 10 percent credit as a "user fee." MMDS makes their profit from selling computer time-sharing services. USDA, in putting its data on the MMDS system for public access is providing MMDS with a business opportunity. The more public users there are, obviously, the more money MMDS will earn in marketing the EDI system. They in no way are increasing charges to their users because they are charging standard rates. By giving us the 10 percent credit, they are essentially sharing with the USDA software development costs which were necessary to make the system possible.

As was previously mentioned, the Department required special software to make its highly time-sensitive data available to the public in an acceptable manner meeting both their requirements and ours. Both the initial development cost and our continuing operational costs can be largely attributed to public use. The ten percent credit would cover only a very small part of our overall costs.

10. How does the "user fee" charged to public users of the EDI system compare to the user fees charged for printed documents?

There is a logical comparison in that costs for documents cover only the cost of producing the document; costs for EDI service cover only the cost of access to the computer based service to acquire the report. In both cases the charge is for the service and NOT for the data itself. The obvious difference is in the quality of service and its value to the public.

11. Since the EDI system is providing information within the Department as well as to outside users, are there any costs that uniquely support the outside dissemination part of EDI? Would the operational costs of the EDI system be any cheaper if no outside dissemination features were supported?

The specialized software is specifically to meet the needs of the public users. If we were only concerned with meeting the needs of data sharing within the Department, we would probably install the system on our own

Departmental Computer Centers which are not open to the public at large. The EDI system is specifically for the public. We will use it internally also so that our Agencies don't have to duplicate the data for access by our own personnel. Our own needs could be met more easily by simpler software that is already available if that were our only requirement.

Operational costs for the Department would be similar whether we operate the system on our own equipment or on that of MMDS.

12. If there were no demand for electronic information by outside users, might the Department have established an electronic information system like EDI for its own internal use? Would such an internal system have differed in any major way from EDI?

As stated above, the EDI system was designed specifically to meet requirements of the public users. Internal requirements could have been satisfied with a simpler system without features such as auto-dial and could have been operated on our own Departmental computer systems.

13. The contract with MMDS indicates that the revenue credited to the Department by MMDS will be offset against the contract price. Why isn't this revenue deposited in the Treasury as a miscellaneous receipt?

The revenue credited to the Department by MMDS is to help defray the cost of implementing the system for the benefit of the level one users. This credit is retained by the Department so that Agency appropropriated funds do not subsidize the level one users.

14. What is the volume of public use of the EDI system during the first few weeks of operation?

It is too early to give you any meaningful volume data on public use. When the EDI system went operational on July 30, 1985, MMDS had contracts with ten user organizations. We are expecting this number to increase consistent with our original projections as more become aware of the system and its value to them.

15. How will Agnet or other existing Department electronic information systems be affected by EDI? Will these other systems be replaced or will they continue to exist?

Commercial dissemination systems such as Agnet will benefit from EDI in that they will be able to obtain all time-sensitive or perishable USDA data from a single source. This is a more cost-effective approach for them and is easier from an operational viewpoint. The automatic dial feature is a major asset to them in their business because they know they will receive reports as soon as they are released by the USDA and at the same time as does their competition.

I assume by "other systems" you are referring to the several pilot efforts initiated by the USDA agencies to test the use of electronic medium for disseminating data. These pilots will be discontinued and all data will be made available only through EDI. The timing of the phasing out of alternative systems will depend on the requirements of those depending on them and their ability to switch to alternative sources of our data. One of the objectives of the EDI system is to provide our agencies with a single system to meet their dissemination requirements and eliminate the need for multiple transmissions.

16. How does the price for using EDI compare to the price of Agnet or other similar electronic systems? Please respond with respect to Departmental users and public users.

It is difficult to make a direct comparison of EDI costs with the various services that have been piloted because they are so different in terms of scope and service provided.

Public users--In the past, ERS and FAS placed their data on Agnet at no cost to Agnet. This was done under a cooperative arrangement to test the desirability and effectiveness of electronic data dissemination. It was the success of pilots such as Agnet that convinced us that the technique had merit but the service had to be procured on a competitive basis to assure a fair selection. Agnet will now be expected to pay MMDS for the computer/communications services it utilizes in receiving tne data. MMDS will charge their standard commercial time-sharing rates for the service.

Departmental users--We are expecting the Departmental users of EDI to pay essentially the same as they would if they were to obtain the data from any other service.

APPENDIX 6.—LETTER TO CHAIRMAN GLENN ENGLISH, GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE SUBCOMMITTEE FROM GUY M. BLYNN, EXECUTIVE VICE PRESIDENT, THE UNITED STATES TRADEMARK ASSOCIATION, DATED NOVEMBER 4, 1985

THE UNITED STATES TRADEMARK ASSOCIATION
6 EAST 45TH STREET • NEW YORK, N.Y. 10017
TELEPHONE: 212-986-5880

EXECUTIVE OFFICES

November 4, 1985

The Honorable Glenn English, Chairman
Subcommittee on Government Information,
Justice, and Agriculture of the
Committee on Government Operations
B349-C Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman English:

I wish to thank you and the members of your staff for the consideration shown to me and to The United States Trademark Association during your Subcommittee's hearing on October 18, 1985. The opportunity to share views with members of Congress is an important part of our democratic system and The United States Trademark Association values such opportunities most highly.

Having had the opportunity to review the transcript of my remarks before your Subcommittee, I would like to elaborate on two points that were addressed during the hearing.

The first is whether the maintenance of both a paper and electronic record of the Patent and Trademark Office's trademark information would resolve the pending conflicts relating to public access and fees. The second deals with the PTO's proposal to provide limited free access time (e.g., six hours) to any person desiring to use the PTO's electronic database.

USTA doubts that the maintenance of two identical records would be efficient and believes it would be extremely costly. Further, since the recognition of the need for an electronic database grew out of the public's frustration with the PTO's inability to maintain a complete and accurate paper record, it seems unlikely that the PTO now could maintain a paper record which would be equivalent to the electronic database, particularly when the PTO has no operational motivation to maintain it. In reality, users of the PTO's trademark search room would not have a viable choice because the two would not be equivalent.

Finally, the maintenance of a paper record, affordable by all, and a better electronic database, affordable only to those willing to pay a hefty fee, may have far-reaching policy implications. Is our form of government one that should be structured around the concept of rendering services based upon one's ability to pay?

The second point is Commissioner Quigg's proposal to allow a limited amount of free access time to each person who wishes to use the PTO's electronic database. Even though this proposal has been circulating for some time, The United States Trademark Association has not been provided with any details. However, on analysis of the concept, USTA believes that it is likely to be unworkable and costly.

Assuming that each member of the public were to be given six hours of access time without charge, you could rest assured that each of the members of my household and several of my acquaintances would be asked to donate their free connect time to me. Imagine what would happen if this were repeated by every major corporation; imagine the schemes which might be concocted by those wishing to "trade" in hours. And, imagine the administrative and accounting nightmare to be suffered by the PTO in its attempt to manage such a system.

As I indicated at the hearing, The United States Trademark Association stands ready and willing to respond to any further questions which you or other members of the Committee may have at any time, and to work with the PTO to improve the way in which service is rendered to the public.

Sincerely yours,

Guy M Blynn

Guy M. Blynn
Executive Vice President

GMB:dd
encl.
cc: William A. Finkelstein, Esq. w/encl.
Robin A. Rolfe, Esq. w/encl.

APPENDIX 7.—MATERIAL RELATING TO OMB DRAFT CIRCULAR ON MANAGEMENT OF INFORMATION RESOURCES

A. "MANAGEMENT OF FEDERAL INFORMATION RESOURCES; NOTICE AND REQUEST FOR PUBLIC COMMENT," OFFICE OF MANAGEMENT AND BUDGET, FED. REG., MARCH 15, 1985

federal register

Friday
March 15, 1985

Part V

Office of Management and Budget

Management of Federal Information Resources; Notice and Request for Public Comment

OFFICE OF MANAGEMENT AND BUDGET

Management of Federal Information Resources

[Note: This reprint incorporates editorial corrections that are published in the **Federal Register** of Thursday, March 21, 1985.]

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Draft OMB Circular No. A——; Request for Public Comment.

SUMMARY: This Circular is intended to provide a general policy framework for management of Federal information resources. The Circular implements provisions of the Paperwork Reduction Act of 1980 as well as other statutes, Executive Orders, and policies concerning general information policy, information technology, privacy, and maintenance of Federal records. The Office of Management and Budget published a notice concerning development of the Circular on September 12, 1983, and received comments and suggestions from the public. This Circular supersedes OMB Circular Nos. A-71, A-90, A-108, and A-121.

DATE: Comments from the public should be submitted no later than May 14, 1985.

ADDRESS: Comments should be addressed to: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235 New Executive Office Building, Office of Management and Budget, Washington, D.C. 20503. Telephone: (202) 395-4814.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (hereinafter the Act), Pub. L. 96-511, 94 Stat. 2812, codified at Chapter 35 of Title 44 of the United States Codes, establishes a broad mandate for agencies to perform their information activities in an efficient, effective, and economical manner. Section 3504 of the Act provides authority to the Director, Office of Management and Budget (OMB), to develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

This Circular implements OMB authority under the Act with respect to section 3504(b), general information policy, section 3504(e), records management, section 3504(f), privacy, and section 3504(g), Federal automatic data processing and telecommunications; the Privacy Act of 1974 (5 U.S.C. 552a); section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759); the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); and Executive Order 12046 of March 27, 1978. The Circular complements 5 CFR Part 1320, Controlling Paperwork Burden on the Public, which implements other sections of the Paperwork Reduction Act dealing with controlling the reporting and recordkeeping burden placed on the public.

In addition, this Circular revises and consolidates policy and procedures in five existing OMB directives and rescinds these directives.

A-71—Responsibilities for the Administration and Management of Automatic Data Processing Activities
Transmittal Memorandum No. 1 to Circular No. A-71—Security of Federal Automated Information Systems
A-90—Cooperating with State and Local Governments to Coordinate and Improve Information Systems
A-108—Responsibilities for the Maintenance of Records about Individuals by Federal Agencies
A-121—Cost Accounting, Cost Recovery, and Interagency Sharing of Data Processing Facilities.

Development of this Circular. On September 12, 1983, OMB published a Notice in the **Federal Register**, 48 FR 40964, announcing development of an OMB policy circular on Federal information management and soliciting public comment. The notice stated that OMB was engaged in rewriting the five policy directives above and also solicited public comment on 16 issues going beyond the five policy directives. In response to this notice, by January 1984 OMB received comments from 14 Federal agencies and 39 members of the public. These comments were summarized by OMB and the summary was widely distributed to interested parties. Comments on the notice have been considered in formulating this Circular.

OMB's review of the five existing policy directives led to the conclusion that much, but not all, of their content was procedural in nature, concerned chiefly with how policies were to be carried out. OMB determined that it was important clearly to distinguish the statement of policies from the procedures for implementing those policies. For this reason the main body of this Circular consists of basic considerations and assumptions, policies, and assignments of responsibility; the appendices to this Circular consist of procedures for implementing various policies. OMB developed the main body of this Circular relying upon comments on the **Federal Register** notice as well as other forms of Federal agency and public input, principally meetings with interested parties. For the procedural revisions, OMB relied on the assistance of interagency task groups.

The revised contents of Circular No. A-71, dealing with assignments of responsibilities, are in the main body of this Circular. The contents of Circular No. A-90 are rescinded entirely, with the exception of a policy statement at section 8(b)(17) of this Circular. Revisions of the procedural aspects of the other three policy directives—Transmittal Memorandum No. 1 to A-71, A-108, and A-121—are appendices to this Circular. The appendices will have the same prescriptive force as this Circular and will, when final, be issued as part of this Circular.

On September 17, 1984, the President signed National Security Decision Directive (NSDD) No. 145, National Policy on Telecommunications and Automated Information Systems Security. The NSDD requires that the Director, OMB, review for consistency with the NSDD, and amend as appropriate, OMB Circular No. A-71, Transmittal Memorandum No. 1. The draft Circular and Appendix III are intended to satisfy the NSDD requirement.

Analysis of Key Sections

7. Basic Considerations and Assumptions. Basic considerations and assumptions are statements that provide the underpinnings for the prescriptive policies in section 8. These are either derived from statutes or legislative history, or represent executive branch management philosophy as embodied in this Circular.

—Statements 7-a through 7-d provide the general context for management of Federal information resources.
—Statement 7-e states a general predisposition to use up-to-date information technology to manage Federal information resources.
—Statements 7-f and 7-g pertain to the Privacy Act and the Freedom of Information Act, respectively.
—Statement 7-h pertains to the National Science and Technology Policy, Organization and Priorities Act.
—Statement 7-i pertains to the Federal Records Act.

—Statement 7–j states a relationship between Federal information policy and international information policy.

8. Policies. This section is divided into two subsections that generally correspond to the twofold definition of information resources management in section 6-b, namely, information itself and the resources associated with information.

a. Information Management. The Paperwork Reduction Act acknowledges that information is a valuable resource and should be managed as such. Proceeding from this premise, this subsection states policies concerning the management of Federal information.

(1) and (2). Information Collection and Sharing. Because creation or collection of information requires allocation of scarce resources, agencies must economize on such activities. Agencies must justify the creation or collection of new information in the light of their statutory missions, and must plan from the outset for the steps in the information life cycle. Before creating or collecting new information, agencies should look first to other agencies and the private sector in order to satisfy their needs. These requirements complement the Paperwork Reduction Act and OMB's regulation *Controlling Paperwork Burdens on the Public* (5 CFR Part 1320), which requires agencies to demonstrate that collections of information have practical utility and are not duplicative of information already available to the agency from other sources.

(3) through (6). Privacy Act and Freedom of Information Act. These paragraphs contain policy statements pertaining to the Privacy Act and incorporating the policies of OMB Circular No. A-108, which is rescinded and superseded. Agencies are to ensure that they meet the requirements of the Privacy Act regarding collection of individually identifiable information. Such information is to be maintained and protected so as to preclude intrusion into the privacy of individuals. Individuals must be accorded access and amendment rights to records, as provided in the Privacy Act. Appendix I prescribes procedures for the maintenance of records about individuals in accordance with the Privacy Act.

In addition to Privacy Act considerations, statements (3) and (4) include provisions concerning proprietary information. Agencies are to minimize their collection of proprietary information, consistent with legal requirements and operational necessity and, when such information must be collected, agencies must provide for its protection.

(7). Training. Agency personnel must receive proper training to safeguard information resources. Training is particularly important in view of the changing nature of information resources management. The development of end user computing and office automation, for example, place the management of information and information technology in the hands of nearly all agency personnel rather than in the hands of a few employees at centralized facilities such as large computer centers. Policies and procedures for computer security, records management, protection of privacy, and other safeguards need to be incorporated into information resources management training programs.

(8) and (9). Information Dissemination. The mere fact that an agency has created or collected information is not itself a valid reason for creating a program to disseminate the information to the public. Agencies create and collect much information, often for purely internal governmental purposes, that is not intended for dissemination, for which there is no public demand, and the dissemination of which would serve no public purpose and would not be cost-justified; e.g., compilations of routine time and attendance records for Federal employees, or publication of the thousands of pages common carrier tariff filings by regulatory agencies. While such information may be subject to access upon request under provisions of agency statutes, the Freedom of Information Act, or the Privacy Act, the agency must demonstrate in each case the need actively to disseminate such information. Over time, changes in laws, economic conditions, or information technology can result in changes in public demand, public purpose, or dissemination costs; e.g., an agency's shift to electronic filing of reports might generate a public demand for electronic dissemination that could be satisfied at minimal cost to the government. The decision to disseminate information, however, entails potentially significant costs and must be addressed separately from the decision to create or collect information.

If agencies do contemplate disseminating particular information, they should plan for its dissemination before creating or collecting the information (see 8–a(1)). Planning for dissemination should recognize that, while government information provided to the public should be distributed in a useful form, dissemination activities consume significant economic resources and may not be essential to the government or the public. It is important, therefore, that agencies set strict conditions upon the dissemination function.

The first question an agency must ask itself is whether it should disseminate a given information product or service at all, or, if the agency is already disseminating the product or service, whether it should continue to do so. Before deciding to disseminate an information product or service, and periodically thereafter, an agency must be able to demonstrate that the dissemination of the product or service is either required by law, or is clearly permitted by law and is essential to accomplishing the agency's mission.

Given a statutory and mission-related basis, agencies must also ask themselves whether a proposed or existing information product or service substantially duplicates similar products or services that are already available, either from another agency or from the private sector. More than this, even if the product or service does not presently exist, an agency must ask whether it is reasonable to expect that another organization, public or private, would offer the product or service if the agency did not offer it. It so, then the agency should not disseminate the information product or service. Where possible, agencies should disseminate information products and services through existing programs, such as statutorily authorized technical information clearinghouses and the Federal Depository Libraries, rather than creating new programs. (Note that "government publications," as defined at 44 U.S.C. 1902, must be made available through the Federal Depository Libraries.)

When agencies have justified and made the basic decision to disseminate information, they must also satisfy conditions regarding the manner of dissemination. First, agencies must act in the most cost effective manner, which includes maximum reliance on the private sector. This is merely an application of the policy stated in OMB Circular No. A-76, Performance of Commercial Activities, to agency information dissemination programs. It is "the general policy of the government to rely on commercial sources to supply the products and services the government needs," including products and services the government needs in order to disseminate information to the public. For example, before an agency establishes a service for electronic dissemination of government information via an online computer system, the agency should compare the cost of contracting for operation of the service versus in-house performance and determine whether in-house performance is less costly.

Agencies also must take reasonable steps to ensure that members of the public whom the agency has an obligation to reach have a reasonable ability to acquire the information. If the information product or service is of broad public interest, agencies can economize on information dissemination programs and at the same time ensure that the interested public has reasonable opportunity to receive government information by using existing dissemination mechanisms, as noted above. In addition, agencies should take care that they do not permit contractors functioning as sole suppliers for the government to exercise monopolistic controls in ways that defeat the agencies' information dissemination obligations, for example, by setting unreasonably high prices. In some cases agencies may need to formulate contractual terms with a sole supplier contractor so that the contractor functions as a mere intermediary for the agency in dealing with end users in the public.

The Federal Government is the sole possessor and supplier of certain types of information, which is frequently of substantial commercial value. Dissemination of such information, or its dissemination in a specific form or medium, may represent a government service from which recipients derive special benefits, in which case they may be subject to OMB Circular No. A-25, User Charges. For example, where the information is already substantially available in printed form, agencies should consider dissemination in electronic form to be a service of special benefit, the costs of which should be recovered through user charges. At present, most agencies do not have coherent, agencywide policies and procedures for setting user charges for information products and services with a view to cost recovery. Agencies will now be required to recover costs for information products through user charges, where appropriate. Agencies must also establish procedures for periodically reviewing their information dissemination programs.

b. Information Systems and Information Technology Management. This subsection states policies concerning the planning, acquisition, operation, and management of Federal information systems and technology. The Federal information systems and technology budget, which was $14 billion in FY 1985, is projected to increase at a rate faster than that of the overall Federal budget. With outlays at these levels and agencies becoming increasingly dependent upon information technology to accomplish their missions, it is essential that planning processess be applied to the acquisition and application of information technology.

(1). Planning. The Paperwork Reduction Act mandates a stronger central role in information resources planning. Specifically, the Act requires that OMB: (1) Publish a five-year governmentwide automatic data processing and telecommunications plan, (2) review and coordinate agency proposals for the acquisition and use of information technology; and (3) promote the use of the technology to improve governmental efficiepcy and effectiveness. In order to meet these objectives, it is necessary to initiate a governmentwide process for developing and institutionalizing information technology planning that is based in agency programs and missions. The planning must also be tied to the budget so that budgetary decisions derive from plans, and conversely, so that budgetary constraints are reflected in the plans. The process must further ensure that sufficient information is available to the central agencies to enable them to monitor compliance with Federal policies and identify major issues, including cross-cutting issues where more active centralized planning and management may be appropriate. Hence, agencies must institute information planning processes tied to both the conduct of programs and the preparation of the agency's budget.

(2) and (3). Management Controls and Accountability. Basic management controls for agency information systems are fundamental to sound information resources management. These controls should ensure the documentation and periodic review of major information systems, as well as periodic cost-benefit evaluation of overall information resources management in light of agency missions. In order to provide greater incentive for management efficiencies, accountability for information systems should be vested in the officials responsible for operating the programs that the systems support.

Program managers depend upon information systems to carry out their programs, and yet frequently they do not have direct control over the technical and operational support for those systems. Program managers often depend upon agency computer centers or contracted service organizations, the heads of which may not be directly accountable to the program managers in a formal organizational sense. Program managers are nonetheless responsible for conducting their programs and, to the extent successful conduct of the programs entails support from information systems, program managers must be held accountable for acquiring that support. The responsibilities of program managers are therefore presumed to include securing information systems support as needed, and planning for contingencies. Technical support organizations have a concomitant responsibility to meet their commitments, contractual or otherwise, to their program clients, but the program official has the ultimate responsibility for delivering a program's product or service.

(4) and (5). Sharing Information Processing Capacity. Circular No. A-121, which is rescinded and superseded, required only that the holder of excess automatic data processing capacity share such capacity. Because the holder of excess capacity has little incentive to seek opportunities for sharing, however, the new policy requires both that the holder share capacity and that the agency seeking information processing capacity fulfill its needs from other agencies or the private sector, whenever possible, before acquiring the new capacity itself. Procedural aspects of these policy statements are found in Appendix II.

(6) and (7). Life Cycle Costing: and Avoiding Duplication. Agencies frequently develop information technology incrementally, through a series of interim upgrades, without regard for longer term considerations such as the information systems' life cycle. As part of their planning, agencies need to consider the full information system life cycle when determining the cost of information technology. Similarly, agency planning should ensure that information systems are not unnecessarily duplicative of systems available elsewhere in government or from the private sector.

(8). Software Management. The prevailing agency practice of developing customized computer software is a source of inefficiency, as the General Accounting Office and others have noted. This practice is excessively costly in terms of initial development, continued maintenance, and eventual conversion to new technology, because it requires the agency to bear the full cost of developing and maintaining the software it uses. Managers are therefore enjoined to acquire generic, off-the-shelf software available from the

private sector instead of developing their own.

(9) Interconnectivity. Agencies often acquire technology that is incapable of communicating with other systems with which the agencies need to communicate. Interconnectivity or compatibility among information systems has consequently emerged as a significant information resources management problem. Agencies must acquire or develop information systems in a manner that enhances necessary compatibility.

(10) through (13) Security. Security of information systems means both the protection of information while it is within the systems and also the assurance that the systems do exactly what they are supposed to do and nothing more. Information system security entails managment controls to ensure the integrity of operations including such matters as proper access to the information in the systems and proper handling of input and output. In this sense, security of information systems is first and foremost a management issue and only secondly a technical problem of computer security.

The recent introduction of smaller and more powerful computer systems and new communications technology and transmission media, together with the greater involvement of end users in managing information resources, have increased the potential vulnerability of Federal information systems and hence the level of management concern. Protecting personal, proprietary, and other sensitive data from unauthorized access or misuse; detecting and preventing computer related fraud and abuse; and assuring continuity of operations of major information systems in the event of emergency related disruptions are increasingly serious policy issues. Policy previously found in Transmittal Memorandum No. 1 to OMB Circular No. A-71 is here revised; procedural aspects of the policy are in Appendix III to the Circular.

The General Accounting Office reported in its review of the first year implementation of the Federal Managers Financial Integrity Act (FIA) that internal controls in automatic data processing systems received inadequate coverage in FIA evaluations. GAO noted that some agencies were uncertain of the relationship between (a) OMB Circular A-71, Transmittal Memorandum No. 1, Security of Federal Automated Information Systems, and (b) OMB Circular No. A-123, Internal Control Systems. The relationship between security of automated information systems and agency internal control reports is now stated clearly in Appendix III.

(14) Standards. The National Bureau of Standards, Department of Commerce, develops and issues Federal Information Processing Standards, and the National Communications System develops and issues Federal Telecommunications Standards. Some standards are mandatory for Federal agencies, while others are voluntary. Agencies may waive the use of Federal standards under certain conditions and pursuant to certain procedures, which vary depending upon the individual standard. While governmentwide standards can result in management efficiencies, standards can also have the untoward effects of regulations, as noted in OMB Circular No. A-119. Agencies need to be mindful of the regulatory effects of standards, and should continuously assess their relative costs and benefits and their effects upon the agency's accomplishment of its mission.

(15) Avoiding Information Technology Monopolies. Many agencies operate one or more central information technology facilities to support agency programs. In these agencies, program managers are often required to use the central facilities. The manager of such a monopoly facility has a lesser incentive to control costs, since he or she has a captive clientele. The program manager has little leverage to ensure that information processing resources are efficiently allocated since he or she cannot seek, or can seek only with great difficulty, alternative sources of supply. To provide incentives conducive to more businesslike procedures in these facilities, agencies should avoid monopolistic information processing arrangements and should enter into them only if their cost effectiveness is clear and they are subject to periodic review. Appendix II specifies certain procedures with respect to this policy.

(16) Cost Recovery. This policy constitutes a revision to policy stated in OMB Circular No. A-121. Whereas Circular No. A-121 required only that costs for automatic data processing facilities be *allocated* to users, agencies must now *recover* the costs of information technology facilities from government users. Experience with Circular No. A-121 showed OMB that allocating costs had little effect on agencies' behavior; recovering costs means that actual transfers of funds will take place between suppliers and users of information technology facilities. Procedural aspects of the policy appear in Appendix II.

(17) Coordination with State and Local Governments. This policy reaffirms policy previously found in Circular No. A-90, Transmittal Memorandum No. 1. The interagency group that worked on the revision of Circular No. A-90 recommended, and OMB agreed, that the Circular should be rescinded except for a single policy statement prohibiting Federal agencies from placing unnecessary restrictions on the information systems that State and local governments use to carry out federally financed program activities.

(18) Application of Up-to-date Information Technology. Recent availability of low cost, highly efficient and effective electronic information technology can greatly increase worker productivity and facilitate operation of Federal agency programs. The Circular states a predisposition, based in the Paperwork Reduction Act, in favor of applying such technology to the information life cycle within a responsible management context. Two broad areas of information technology merit further discussion: (1) Electronic information collection and dissemination, and (2) end user computing.

Electronic Collection and Dissemination of Information. Federal agencies are moving rapidly to provide for collection and dissemination of information through electronic media. In developing this Circular, OMB considered whether it was necessary to provide specific policies concerning electronic collection and dissemination of governmental information. OMB concluded that, except for the general predisposition in favor of applying new technological developments to information resources management, the policies that apply to information collection and dissemination in other media also apply to electronic collection and dissemination. It is important, however, that agencies recognize the necessity of systematically thinking through the application of policies stated elsewhere in this Circular to electronic collection and dissemination of information. For example, when developing electronic collection programs, agencies shall give particular attention to issues such as privacy, public access, and records management. When developing electronic dissemination programs, agencies should ensure that access is provided to each class of users upon reasonable terms, avoid problems arising from monopolistic control, ensure maximum reliance upon the private sector, and take necessary steps for cost accounting and cost recovery.

End User Computing. Federal agencies are also moving rapidly to acquire end user computing capabilities. OMB endorses the managed innovation approach to end user computing presented in GSA's publication *Managing End User Computing in the Federal Government* (June 1983). Because end user computing places management of information in the hands of individual agency personnel rather than in a central automatic data processing organization, the Circular requires that agencies train end users in their responsibilities for safeguarding information; Appendix III deals in part with the security of end user computing.

9. Assignment of Responsibilities. This section assigns responsibilities for the management of Federal information resources addressed in this Circular. OMB Circular No. A-71 is rescinded and its contents are revised and incorporated into this section along with responsibilities assigned under the Paperwork Reduction Act; section 111 of the Federal Property and Administrative Services Act, as amended; and Executive Order 12046. Certain assignments of responsibility from OMB to other agencies, as noted below, are also included. Following are principal noteworthy aspects of this section.

Triennial Reviews. The Administrator of Information and Regulatory Affairs and the Deputy Administrator of the General Services Administration, in an exchange of correspondence dated June 13 and July 22, 1983, concurred that GSA has the necessary statutory authority to conduct reviews of Federal agency Information Resources Management (IRM) activities. The Paperwork Reduction Act provides that the Director of OMB, ". . . shall with the advice and assistance of GSA selectively review, at least once every three years, the IRM activities of each agency to ascertain their adequacy and efficiency." Separate reviews of agency IRM activities by OMB and GSA would be unnecessarily duplicative, which would not be consistent with the Act. Accordingly, the IRM reviews conducted by GSA will be designed to meet OMB's requirements under the Paperwork Reduction Act as well as GSA's own needs.

Senior Officials for Information Resources Management. In accordance with 44 U.S.C. Chapter 35, agencies are required to designate a senior official to carry out responsibilities under the Paperwork Reduction Act. The designation of the official is intended to assure clear accountability for setting policy for agency information resources management activities, provide for greater coordination among the agency's information activities, and ensure greater visibility of such activities within the agency. The responsibilities of the senior official for information resources management were identified in OMB Bulletin No. 81-21, which has expired. Those responsibilities are now established in this Circular.

International Information Policy. The Circular deals with the management of information resources held by the Federal government. While the creation, collection, processing, transmission, dissemination, use, storage, and disposition of information by the Federal government has international ramifications, Federal government information policy is not the same as "U.S. information policy," which refers to U.S. national interests in the information field vis-a-vis the policies and interests of other nations. The Circular formally acknowledges this distinction and assigns responsibilities for international information policy only insofar as it relates to Federal government information policy.

Timely Technology Procurement. Inherent in effective management of information technology is the ability of program managers to acquire technology in a timely manner. GSA is assigned the responsibility in section 9 to develop criteria that will streamline procurement procedures and delegate procurement authority to agencies that comply with those procedures. All Federal agencies are directed in section 9 to develop internal policies and procedures that further provide for timely acquisition of information technology.

Records Management. The Paperwork Reduction Act makes the management of Federal records an integral part of information resources management. While no new policies are embodied in this Circular, responsibilities have been assigned in order to ensure that agency records management programs are considered within the context of Federal information resources management.

10. *Oversight.* The broad scope of the Circular dictates a strategy of focusing oversight on a series of aspects of information resources management rather than on a single comprehensive reporting scheme. OMB intends to use existing mechanisms, such as the fiscal budget, information collection budget, and management reviews, to examine agency compliance with the Circular. For example, during 1984 the management reviews for the FY 1986 budget year concentrated on five cross-cutting information issues: overall information resources management strategy, telecommunications, software management, "electronic filing," and end user computing. OMB issued data call bulletins requesting information specific to these issues, targeted the issues for special attention during the management reviews, and requested individual agencies to submit management improvement plans on specific aspects of the issues. Pursuit of this kind of selective oversight strategy permits OMB and the agencies the flexibility to shift the focus of oversight as information issues and the technological environment change.

Darrell A. Johnson,

Acting Deputy Associate Director for Administration.

CIRCULAR NO A- ——

To the heads of Executive Departments and Establishments

Subject: Management of Federal Information Resources

1. *Purpose*: This Circular establishes policy for the management of Federal information resources. Procedural guidelines for implementing specific aspects of these policies are included as appendices.

2. *Rescissions*: This Circular rescinds OMB Circulars No. A-71, A-90, A-108, and A-121, and all Transmittal Memoranda to those Circulars.

3. *Authorities*: This Circular is issued pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a), section 111 of the Federal Property and Administrative Services Act of 1949 as amended (40 U.S.C. 759), the Budget and Accounting Act of 1921 as amended (31 U.S.C. 11), and Executive Order 12046 of March 27, 1978.

4. *Applicability and Scope*:

a. The policies in this Circular apply to the information activities of all agencies of the executive branch of the Federal government.

b. Information classified for national security purposes should also be handled in accordance with the appropriate national security directives.

5. *Background*: The Paperwork Reduction Act (hereinafter the Act) establishes a broad mandate for agencies to perform their information management activities in an efficient, effective, and economical manner. To assist agencies in an integrated approach to information resources management, the Act requires that the Director of the Office of Management and Budget (OMB) develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to

determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

6. *Definitions*: As used in this circular—

a. The term "agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government excluding the Executive Office of the President with the exception of the Office of Management and Budget and the Office of Administration, or any independent regulatory agency.

b. The term "information" means any communication or reception of knowledge such as facts, data, or opinions, including numerical, graphic, or narrative forms, whether oral or maintained in any medium, including computerized data bases, paper, microform, or magnetic tape.

c. The term "government information" means information created, collected, processed, transmitted, disseminated, used, stored, or disposed of by the Federal government.

d. The term "information system" means the organized collection, processing, and transmission of information in accordance with defined procedures, whether automated or manual.

e. The term "major information system" means an information system that requires special continuing management attention because of its importance to an agency mission; its high development, operating or maintenance costs; or its significant impact on the administration of agency programs, finances, property, or other resources.

f. The term "access to information" refers to the function of providing to members of the public, upon their request, the government information to which they are entitled under law.

g. The term "dissemination of information" refers to the function of distributing government information to the public whether through printed documents, or electronic or other media. "Dissemination of information" does not include intra-agency use of information, interagency sharing of information, or responding to requests for "access to information."

h. The term "information technology" means the hardware and software used in connection with government information, regardless of the technology involved, whether computers, telecommunications, micrographics, or others.

i. The term "information technology facility" means an organizationally defined set of personnel, hardware, software, and physical facilities, a primary function of which is the operation of information technology.

j. The term "information resources management" means the planning, budgeting, organizing, directing, training, and control associated with government information. The term encompasses both information itself and the related resources, such as personnel, equipment, funds, and technology.

Other definitions specific to the subjects of the appendices appear in the appendices.

7. *Basic Considerations and Assumptions*:

a. The Federal government is the largest single producer, consumer, and disseminator of information in the United States. Because of the size of the government's information activities, the management of Federal information resources is an issue of continuing importance to the public and to the government itself.

b. Government information is a valuable resource. It is an essential tool for managing the government's operations, provides citizens with knowledge of their society, and is a commodity with economic value in the marketplace.

c. The value of government information to the government is solely a function of the degree to which the information contributes to achieving agencies' missions.

d. The public and private benefits derived from government information must exceed the public and private costs of the information.

e. The use of up-to-date information technology offers opportunities to improve the management of government programs, and access to, and dissemination of, government information.

f. The public's right to access to government information must be protected in the management of Federal agency records.

g. The individual's right to privacy must be protected in Federal Government information activities involving personal information.

h. The open and efficient exchange of government scientific and technical information, subject to applicable national security controls and proprietary rights others may have in such information, fosters excellence in scientific research and the effective use of Federal research and development funds.

i. The value of preserving government records is a function of the degree to which preservation protects the legal and financial rights of the government or its citizens, and provides an official record of Federal agency activities for agency management and historical purposes.

j. Federal Government information policies and activities can affect, and be affected by, the information policies and activities of other nations.

8. *Policies:*

a. *Information Management*. Agencies shall:

(1) Create or collect only that information necessary to achieve agency mission objectives and only after planning for its processing, transmission, dissemination, use, storage, and disposition;

(2) Seek to satisfy new information needs through interagency or intergovernmental sharing of information or through commercial sources before creating or collecting new information;

(3) Limit the collection of individually identifiable information and proprietary information to that which is legally authorized and necessary to achieve agency mission objectives;

(4) Maintain and protect individually identifiable information and proprietary information in a manner that precludes:

(a) Unwarranted intrusion upon personal privacy (see Appendix I); and

(b) Violation of obligations of confidentiality;

(5) Provide individuals with reasonable access to, and the ability to amend errors in, systems of records, consistent with the Privacy Act;

(6) Provide public access to government information, consistent with the Freedom of Information Act;

(7) Ensure that agency personnel are trained to safeguard information resources;

(8) Disseminate government information products and services only where:

(a) Dissemination is either required by law, or

(b) Dissemination is essential to the agency's accomplishing its mission, and the products or services do not duplicate similar products or services that are already provided by other government or private sector organizations, or that could reasonably be expected to be provided by them in the absence of agency dissemination;

(9) Disseminate government information products and services, when the above conditions are met:

(a) In a manner that reasonably ensures the information will reach the members of the public the agency is responsible for reaching.

(b) In the manner most cost effective for the government, including placing maximum feasible reliance on the private sector for the dissemination of the products or services;

(c) So as to recover costs of disseminating the products or services through user charges, where appropriate, in accordance with OMB Circular No. A-25; and

(d) Only after establishing procedures for periodically reviewing the continued need for and manner of dissemination of the products or services.

b. *Information Systems and Information Technology Management.* Agencies shall:

(1) Establish multiyear strategic planning processes for acquiring and operating information technology that meet program and mission needs, reflect budget constraints, and form the bases for their budget requests;

(2) Establish systems of management control that document the requirements that each major information system is intended to serve; and provide for periodic review of those requirements over the life of the system in order to determine whether the requirements continue to exist and the system continues to meet the purposes for which it was developed;

(3) Make the official whose program an information system supports responsible and accountable for the products of that system;

(4) Meet information processing needs through interagency sharing and from commercial sources before acquiring new information processing capacity;

(5) Share available information processing capacity with other agencies to the extent practicable and legally permissible;

(6) Acquire information technology in a competitive manner that minimizes total life cycle costs;

(7) Ensure that existing and planned major information systems do not unnecessarily duplicate information systems available from other agencies or from the private sector;

(8) Acquire off-the-shelf software from commercial sources, unless the cost effectiveness of developing custom software is clear and has been documented;

(9) Acquire or develop information systems in a manner that facilitates interconnectivity;

(10) Assure that information systems operate effectively and accurately;

(11) Establish a level of security for all agency information systems commensurate with the sensitivity of the information and the risk and magnitude of loss or harm that could result from improper operation of the information systems (See Appendix III);

(12) Assure that only authorized personnel have access to information systems;

(13) Plan to provide information systems with reasonable continuity of support should their normal operations be disrupted in an emergency;

(14) Use Federal Information Processing and Telecommunications Standards except where it can be demonstrated that the costs of using a standard exceed the benefits or the standard will impede the agency in accomplishing its mission;

(15) Not require program managers to use specific information technology facilities or services unless it is clear and is convincingly documented, subject to periodic review, that such use is the most cost effective method for meeting program requirements;

(16) Account for the full costs of operating information technology facilities and recover such costs from government users as provided in Appendix II;

(17) Not prescribe Federal information system requirements that unduly restrict the prerogatives of heads of State and local government units;

(18) Seek opportunities to improve the operation of government programs or to realize savings for the government and the public through the application of up-to-date information technology to government information activities.

9. *Assignment of Responsibilities:*

a. *All Federal Agencies.* The head of each agency shall:

(1) Have primary responsibility for managing agency information resources;

(2) Ensure that the information policies, principles, standards, guidelines, rules, and regulations prescribed by OMB are implemented appropriately within the agency;

(3) Develop internal agency information policies and procedures and oversee, evaluate, and otherwise periodically review agency information resources management activities for conformity with the policies set forth in this Circular;

(4) Develop agency policies and procedures that provide for timely acquisition of required information technology;

(5) Maintain an inventory of the agencies' major information systems and information dissemination programs;

(6) Maintain a record of agency activities in accordance with the Federal Records Act of 1950, as amended;

(7) Identify to the Director, OMB, statutory, regulatory, and other impediments to efficient management of Federal information resources and recommend to the Director legislation, policies, procedures, and other guidance to improve such management;

(8) Assist OMB in the performance of its functions under the Paperwork Reduction Act, including making services, personnel, and facilities available to OMB for this purpose to the extent practicable;

(9) Appoint a senior official, who shall report directly to the agency head, to carry out the responsibilities of the agency under the Paperwork Reduction Act. The head of the agency shall keep the Director, OMB, advised as to the name, title, authority, responsibilities, and organizational resources of the senior official. For purposes of this paragraph military departments and the Office of the Secretary of Defense may each appoint one official.

b. *Department of State.* The Secretary of State shall:

(1) Advise the Director, OMB, on the development of United States positions and policies on international information policy issues affecting Federal government information activities and ensure that such positions and policies are consistent with Federal information policy;

(2) Ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international information technology standards, and advise the Director, OMB, of such activities.

c. *Department of Commerce.* The Secretary of Commerce shall:

(1) Develop and issue Federal Information Processing Standards and guidelines necessary to ensure the efficient and effective acquisition, management, security, and use of information technology;

(2) Advise the Director, OMB, on the development of policies relating to the procurement and management of Federal telecommunications resources;

(3) Provide OMB and the agencies with scientific and technical advisory services relating to the development and use of information technology;

(4) Conduct studies and evaluations concerning telecommunications technology, and concerning the improvement, expansion, testing, operation, and use of Federal telecommunications systems and advise the Director, OMB, and appropriate agencies of the recommendations that result from such studies;

(5) Develop, in consultation with the Secretary of State and the Director, OMB, plans, policies, and programs relating to international

telecommunications issues affecting government information activities;

(6) Identify needs for standardization of telecommunications and information processing technology, and develop standards, in consultation with the Executive Agent, National Communications System and the Administrator of General Services, to ensure efficient application of such technology;

(7) Ensure that the Federal government is represented in the development of national and, in consultation with the Secretary of State, international information technology standards, and advise the Director, OMB, of such activities.

d. *General Services Administration (GSA).* The Administrator of General Services shall:

(1) Advise the Director, OMB, and agency heads on matters affecting the procurement of information technology;

(2) Coordinate and, when required, provide for the purchase, lease, and maintenance of information technology required by Federal agencies;

(3) Develop criteria for timely procurement of information technology and delegate procurement authority to agencies that comply with the criteria;

(4) Provide guidelines and regulations for Federal agencies on the acquisition, use, maintenance, and disposition of information technology;

(5) Develop policies and guidelines that facilitate the sharing of information technology among agencies as required by this Circular;

(6) Review agencies' information resources management activities to meet the objectives of the triennial reviews required by the Paperwork Reduction Act and report the results to the Director, OMB;

(7) Manage the Automatic Data Processing Fund and the Federal Telecommunications Fund in accordance with the Federal Property and Administrative Services Act, as amended;

(8) Establish procedures for approval, implementation, and dissemination of Federal telecommunications standards and guidelines and for implementation of Federal Information Processing Standards.

e. *National Communications System.* The Executive Agent, National Communications System, shall develop, in consultation with the Administrator of General Services, uniform Federal telecommunications standards and guidelines to ensure national security, emergency preparedness, and continuity of government.

f. *Office of Personnel Management.* The Director, Office of Personnel Management, shall:

(1) Develop and conduct training programs for Federal personnel on information resources management, including end user computing;

(2) Evaluate periodically future personnel management and staffing requirements for Federal information resources management;

(3) Establish personnel security policies and develop training programs for Federal personnel associated with the design, operation, or maintenance of information systems.

g. *National Archives and Records Administration.* The Archivist of the United States shall:

(1) Administer the Federal records management program in accordance with the National Archives and Records Act;

(2) Assist the Director, OMB, in developing standards and guidelines relating to the records management program.

h. *Office of Management and Budget.* The Director of the Office of Management and Budget will:

(1) Provide overall leadership and coordination of Federal information resources management within the Executive Branch;

(2) Serve as the President's principal adviser on procurement and management of Federal telecommunications systems, and develop and establish policies for procurement and management of such systems;

(3) Issue policies, procedures, and guidelines to assist agencies in achieving integrated, effective, and efficient information resources management;

(4) Initiate and review proposals for changes in legislation, regulations, and agency procedures to improve Federal information resources management;

(5) Review and approve or disapprove agency proposals for collection of information from the public, as defined in 5 CFR 1320.7;

(6) Develop and publish annually, in consultation with the Administrator of General Services, a five-year plan for meeting the information technology needs of the Federal government;

(7) Evaluate agencies' information resources management and identify cross-cutting information policy issues through the review of agency information programs, information collection budgets, information technology acquisition plans, fiscal budgets, and by other means;

(8) Provide policy oversight for the Federal records management function conducted by the National Archives and Records Administration and coordinate records management policies and programs with other information activities;

(9) Review, with the advice and assistance of the Administrator of General Services, selected agencies' information resources management activities to meet the objectives of the triennial reviews required by the Paperwork Reduction Act;

(10) Review agencies' policies, practices, and programs pertaining to the security, protection, sharing, and disclosure of information, in order to ensure compliance with the Privacy Act and related statutes;

(11) Resolve information technology procurement disputes between agencies and the General Services Administration pursuant to section 111 of the Federal Property and Administrative Services Act;

(12) Review proposed U.S. government position and policy statements on international issues affecting Federal government information activities and advise the Secretary of State as to their consistency with Federal information policy.

10. *Oversight.* The Director, OMB, will use information technology planning reviews, fiscal budget reviews, information collection budget reviews, management reviews, GSA reviews of agency information resources management activities, and such other measures as he deems necessary to evaluate the adequacy and efficiency of each agency's information resources management and compliance with this Circular.

Appendix I: Federal Agency Responsibilities for Maintaining Records about Individuals
Appendix II: Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities
Appendix III: Security of Federal Automated Information Systems

David A. Stockman,
Director.

Appendix I—Federal Agency Responsibilities for Maintaining Records about Individuals

1. *Purpose and Scope.* This appendix describes agency responsibilities for implementing the Privacy Act of 1974, 5 U.S.C. 552a as amended (hereinafter "the Act"). It applies to all agencies subject to the Act. The appendix constitutes a revision to procedures formerly contained in OMB Circular No. A–108, now rescinded.

2. *Definitions.*

a. The terms "agency," "individual," "maintain," "record," "system of records," and "routine use," as used in this appendix, are defined in the Act (5 U.S.C. 552a(a)).

b. The term "minor change to a system of records" means a change that does not significantly change the system; that is, does not affect the character or purpose of the system and does not affect the ability of an individual to gain access to his or her record or to any information pertaining to him or her which is contained in the system; e.g., changing the title of the system manager.

3. *Assignment of Responsibilities.*

a. *All Federal Agencies.* In addition to meeting the agency requirements contained in the Act, and the specific reporting requirements detailed in this appendix, the head of each agency shall ensure that the following reviews are conducted as often as specified below, and be prepared to report to the Director, OMB, the results of such reviews and the corrective action taken to resolve problems uncovered. The head of each agency shall:

(1) *Section (m) Contracts.* Review every five years a random sample of agency contracts that provide for the maintenance of a system of records on behalf of the agency to accomplish an agency function, in order to ensure that the wording of each contract makes the provisions of the Act apply. (5 U.S.C. 552a(m)(1))

(2) *Recordkeeping Practices.* Review annual agency recordkeeping and disposal policies and practices in order to assure compliance with the Act.

(3) *Routine Use Disclosures.* Review every three years the routine use disclosures associated with each system of records in order to ensure that the recipient's use of such records continues to be compatible with the purpose for which the disclosing agency originally collected the information.

(4) *Exemption of Systems of Records.* Review every three years each system of records for which an exemption from any provision of the Act has been asserted in order to determine whether such exemption is still needed.

(5) *Matching Programs.* Review annually each ongoing matching program in which the agency has participated during the year, either as a source or as a matching agency, in order to ensure that the requirements of the Act, the OMB Matching Guidelines, and the OMB Model Control System and Checklist have been met.

(6) *Privacy Act Training.* Review annually agency training practices in order to ensure that all agency personnel are familiar with the requirements of the Act, with the agency's implementing regulation, and with any special requirements that their specific jobs entail.

(7) *Violations.* Review annually the actions of agency personnel that have resulted either in the agency being found civilly liable under section (g) of the Act, or an employee being found criminally liable under the provisions of section (i) of the Act, in order to determine the extent of the problem and to find the most effective way to prevent recurrences of the problem.

b. *Department of Commerce.* The Secretary of Commerce shall, consistent with guidelines issued by the Director, OMB, develop and issue standards and guidelines for assuring the security of automated information systems.

c. *General Services Administration.* The Administrator of General Services shall, consistent with guidelines issued by the Director, OMB, issue instructions on what agencies must do in order to comply with the requirements of section (m) of the Act when contracting for the operation of a system of records to accomplish an agency purpose.

d. *Office of Personnel Management.* The Director of the Office of Personnel Management shall, consistent with guidelines issued by the Director, OMB:

(1) Develop and maintain governmentwide standards and procedures for civilian personnel information processing and recordkeeping directives to assure conformance with the Act.

(2) Develop and conduct training programs for agency personnel, including both the conduct of courses in various substantive areas (e.g., legal, administrative, information technology) and the development of materials that agencies can use in their own courses. The assignment of this responsibility to OPM does not affect the responsibility of individual agency heads for developing and conducting training programs tailored to the specific needs of their own personnel.

e. *National Archives and Records Administration.* The Archivist of the United States shall, consistent with guidelines issued by the Director, OMB:

(1) Issue instructions on the format of the agency notices and rules required to be published under the Act.

(2) Compile and publish annually the rules promulgated under 5 U.S.C. 552a(f) and agency notices published under 5 U.S.C. 552a(e)(4) in a form available to the public.

(3) Issue procedures governing the transfer of records to Federal Records Centers for storage, processing, and servicing pursuant to 44 U.S.C. 3103. For purposes of the Act, such records are considered to be maintained by the agency that deposited them. The Archivist may disclose deposited records only according to the access rules established by the agency that deposited them.

(4) Provide annually to the Director, OMB, a listing of Privacy Act publication activities, for the previous calendar year, of each agency subject to the Act. This listing shall include the number of new systems of records published, the number of amended systems, the number of exemptions, and the number of uses.

f. *Office of Management and Budget.* The Director of the Office of Management and Budget will:

(1) Issue guidelines and directives to the agencies to implement the Act.

(2) Assist the agencies, at their request, in implementing their Privacy Act programs.

(3) Review the new and altered system reports agencies submit pursuant to section (o) of the Act.

(4) Compile the annual report of the President to the Congress in accordance with section (p) of the Act.

4. *Reporting Requirements.*

a. *Privacy Act Annual Reports.* Agencies shall submit a Privacy Act Annual Report to the Director, OMB, covering their Privacy Act activities for the calendar year. The format and timing of the report will be established by the Director, OMB. (5 U.S.C. 552a(p)).

b. *New and Altered System Reports.* The Act requires agencies to publish notices in the **Federal Register** describing new or altered systems or records, and to submit reports on these systems to the Director, OMB, and to the Congress.

(1) *Altered System of Records.* Minor changes to systems of records need not be reported. The following changes are those for which a report is required:

(a) An increase or change in the number or types of individuals on whom records are maintained. For example, a decision to expand a system that originally covered only residents of public housing in major cities to cover such residents nationwide would require a report. Increases attributable to normal growth should not be reported.

(b) A change that expands the types or categories of information maintained. For example, a personnel file that has been expanded to include medical records would require a report.

(c) A change that alters the purpose for which the information is used.

(d) A change to equipment configuration (either hardware or software) that creates substantially greater access to the records in the systems. For example, locating interactive terminals at regional offices for accessing a system formerly accessible only at the headquarters would require a report.

(e) The addition of an exemption (pursuant to sections (j) or (k) of the Act). Note that, in submitting a rulemaking for an exemption as part of a report of a new or altered system, agencies will meet the reporting requirements of Executive Order 12291 and need not make a separate submission under that order.

When an agency makes a change to an information technology installation, telecommunication network, or any other general changes in information collection, processing, dissemination, or storage that affect multiple systems of records, it may submit a single consolidated new or altered system report, with changes to existing notices and supporting documentation included in the submission.

(2) *Contents of the Report.* The report for a new or altered system has three elements: a transmittal letter, a narrative statement, and supporting documentation that includes a copy of the proposed **Federal Register** notice. There is no prescribed format for either the letter or the narrative statement. The notice must appear in the format prescribed by the Office of the Federal Register's *Document Drafting Handbook.*

(a) *Transmittal Letter.* The transmittal letter should be signed by the senior agency official responsible for implementation of the Act within the agency and should contain the name and telephone number of the individual who can best answer questions about the system. The letter should contain the agency's assurance that the proposed system does not duplicate any existing agency systems. It should also state that a copy of the report has been distributed to the Speaker of the House and the President of the Senate as the Act requires. The letter may also include requests for waiver of the reporting time period.

(b) *Narrative Statement.* the narrative statement should be brief. It should make reference, as appropriate, to information in the supporting documentation rather than restating such information. The statement should:

(*1*) Identify the authority under which the system is maintained. The agency should avoid citing housekeeping statutes, but rather cite the underlying programmatic authority for collecting, maintaining, and using the information. When the system is being operated to support an agency housekeeping program, e.g., a carpool locator, the agency may, however, cite a general housekeeping statute that authorizes the agency head to keep such records as are necessary.

(*2*) Provide the agency's evaluation of the probable or potential effects of the proposal on the privacy of individuals.

(*3*) Describe the relationship of the proposal, if any, to the other branches of the Federal Government and to State and local governments.

(*4*) Provide a brief description of the steps taken by the agency to minimize the risk of unauthorized access to the system of records. A more detailed assessment of the risks and specific administrative, technical, procedural, and physical safeguards established shall be made available to OMB upon request.

(*5*) Explain how each proposed routine use satisfies the compatability requirement of subsection (a)(7) of the Act.

(c) *Supporting Documentation.* Attach the following to all new or altered system reports:

(*1*) An advance copy of the new or altered system notice (consistent with the provisions of 5 U.S.C. 552a(e)(4)) that the agency proposes to publish for the new or altered system. For proposed altered systems the documentation should be in the same form as the agency proposes to publish in the public notice.

(*2*) An advance copy of any new rules or changes to published rules (consistent with the provision of 5 U.S.C. 552a(f), (j), and (k)) that the agency proposes to issue for the new or altered system. If no changes to existing rules are required, the report shall so state. Proposed changes to existing rules shall be provided in the same form as the agency proposes to publish for formal rulemaking.

(*3*) OMB control numbers, expiration dates, and titles of any OMB approved information collection requirements contained in the system of records. If the request for OMB clearance of an information collection is pending, the agency may simply state the title of the collection and the date it was submitted for OMB clearance.

(3) *Timing and Distribution for Submitting New and Altered System Reports.* Submit reports on new and altered systems of records not later than 60 days prior to establishment of a new system or the implementation of an altered system (5 U.S.C. 552a(o)). Submit three copies of each report to:

President of the Senate, Washington, D.C. 20510
Speaker of the House of Representatives, Washington, D.C. 20515
Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

Agencies may assume that OMB concurs in their proposal if OMB has not commented within 60 days from the date the transmittal letter was signed. Agencies may publish system and routine use notices as well as exemption rules in the **Federal Register** at the same time that they send the new or altered system report to OMB and the Congress. The 60 day period for OMB and Congressional review and the 30 day notice and comment period for routine uses and exemptions will then run concurrently.

(4) *Waivers of Report Time Period.* The Director, OMB, may grant a waiver of the 60 day period if the agency asks for the waiver and can demonstrate compelling reasons. Agencies may assume that OMB concurs in their request if OMB has not commented within 30 days of the date the transmittal letter was signed. When a waiver is granted, the agency is not thereby relieved of any other responsibility or liability under the Act. Note that OMB cannot waive time periods specifically established by the Act. Agencies will still have to meet the statutory notice and comment periods required for establishing a routine use or claiming an exemption.

Appendix II—Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities

1. *Purpose.*

This appendix establishes procedures for cost accounting, cost recovery, and interagency sharing of Federal information technology facilities. The appendix revises procedures formerly contained in OMB Circular No. A-121, now rescinded.

2. *Applicability.*

This appendix applies to all information technology facilities that are operated by, or on behalf of, a Federal agency; provide service to more than one user; operate one or more general management computers; and have obligations in excess of $100,000 per year.

3. *Definitions.*

a. The term "information technology facility" means an organizationally defined set of personnel, hardware, software, and physical facilities, a primary function of which is the operation of information technology. An information technology facility includes:

(1) The personnel who operate computers or telecommunications systems; develop or maintain software; provide user liaison and training; schedule computers; prepare and control input data; control, reproduce, and distribute output data; maintain tape and disk libraries; provide security, maintenance, and custodial services; and directly manage or provide direct administrative support to personnel engaged in these activities.

(2) The owned or leased computer and telecommunications hardware, including central processing units; associated peripheral equipment such as disk drives, tape drives, drum storage, printers, card readers, and consoles; data entry equipment; data reproduction, decollation, booking, and binding equipment; telecommunications equipment used for the transfer of data between remote sites and the facility including telecommunications control units, terminals, modems, and dedicated telephone lines.

(3) The software, including operating system software, utilities, sorts, language processors, access methods, data base processors, and other similar multi-user software required by the facility for support of the facility and/or for general use by users of the facility. All software acquired or maintained by users of the facility is excluded.

(4) The physical facilities, including computer rooms; tape and disk libraries; stockrooms and warehouse space; office space; physical fixtures.

b. The term "full costs" means all significant expenses incurred in the operation of an information technology facility. The following cost elements are included:

(1) Personnel, including salaries, overtime, and fringe benefits of civilian and military personnel; training; and travel.

(2) Equipment, including depreciation for owned, capitalized equipment; rental costs; lease costs; and direct expenses for noncapitalized equipment.

(3) Software, including depreciation for capitalized costs of developing, converting, or acquiring software; rental costs for software; and direct expenses for noncapitalized acquisition of software.

(4) Supplies, including office supplies; data processing materials; and miscellaneous expenses.

(5) Contracted services, including technical and consulting services; equipment maintenance; data entry support; operations support; facilities management; maintenance of software; and telecommunications network services.

(6) Space occupancy, including rental and lease of buildings, general office furniture, and equipment; building maintenance; heating, air conditioning and other utilities; telephone services; and building security and custodial services.

(7) Intra-agency services, including the costs of normal agency support services, that are paid by the installation.

(8) Interagency services, including the costs of services provided by other agencies and departments, that are paid by the installation.

c. The term "user" means an organizational or programmatic entity that receives service from an information technology facility. A user may be either internal or external to the agency organization responsible for the facility.

d. The term "general management computer" means a digital computer that is used for any purpose other than as a part of a process control system, space system, mobile system, or a system meeting one of the exclusions identified in the Department of Defense Authorization Act of 1982.

4. *Cost Accounting, Cost Recovery, and Interagency Sharing for Information Technology Facilities.*

a. *Interagency Sharing.* Agencies shall:

(1) Share their information technology facilities with users from other agencies to the maximum extent feasible.

(2) Document sharing arrangements, where the total annual reimbursement exceeds $500,000, with individual written agreements that identify:

(a) Services available for sharing;

(b) Service priority procedures and terms (e.g., quality performance standards) to be provided to each user;

(c) Prices to be charged for providing services;

(d) Reimbursement arrangements for services provided;

(e) Arrangements for terminating the sharing agreement;

(3) Provide standard terms and conditions to users obtaining similar services insofar as possible.

(4) Use such sharing arrangements, when fully documented and part of a formal sharing program, in justifications to OMB for resource requests and allocations only where exceptional circumstances preclude the user agency from using alternative sources.

b. *Cost Accounting.* Agencies shall:

(1) Assure that agency cost accounting procedures are consistent with the Federal Government Accounting Pamphlet No. 4, "Guidelines for Accounting for Automatic Data Processing" (U.S. General Accounting Office, 1978) for the operation of information technology facilities where estimated full costs exceed $3 million per year.

(2) Make annual estimates, using cost finding techniques, of the full costs of operating facilities where estimated costs are less than $3 million per year.

c. *User Cost Distribution System.* Agencies shall implement a user cost system to distribute the full cost of providing services. The user cost system will:

(1) Be consistent with guidance provided in the Federal Government Accounting Pamphlet No. 4 and in the Federal Information Processing Standards Publication No. 96, "Guidelines for Developing and Implementing a Charging System for Data Processing Services" (National Bureau of Standards, Department of Commerce, 1982).

(2) Price each service provided by the facility to the users of that service on an equitable cost sharing basis commensurate with the amount of resources required to provide that service and the priority of service provided. The cost of individual transactions may be estimated provided that they are periodically reconciled to assure that the full costs of operations are equitably allocated among all users. Fixed price arrangements for services during a specified period of time are permissable provided that such prices are periodically adjusted to assure an equitable allocation of costs.

(3) Directly distribute to the recipient of the services the full costs of dedicated services, including application systems developed and maintained; software unique to a single application; and remote terminals and modems.

d. *Cost Recovery.* Agencies shall:

(1) Submit periodic statements to all users of agency information technology facilities specifying the costs of services provided;

(2) Recover full costs from Federal users of the facility; and

(3) Recover costs from nonfederal users of the facilities consistent with OMB Circular No. A-25.

e. *Accounting for Reimbursements Received.* Agencies shall:

(1) Reduce agency budget and appropriation requests by the amount of planned reimbursements from shared information technology facilities;

(2) Prepare, at the close of each fiscal year a report that documents in the agency's official records the full cost of operating information technology facilities that recover more than $500,000 per year from sharing reimbursements. The report should document past year

costs and provide estimates for the current and budget years;

(3) Deposit to the U.S. Treasury as miscellaneous receipts the excess of reimbursements over full costs in any fiscal year; and

(4) Use, at agency discretion, the portion of reimbursements arising from equipment and software depreciation for the replacement and augmentation of information technology capital assets, provided such usage is specifically approved as part of the budget and appropriation.

5. *Selection of Information Technology Facilities to Support New Applications.* In selecting information technology facilities to support new applications, agencies shall establish a management control procedure for determining which facility will be used to support each significant application. This procedure shall ensure that:

(a) All alternative facilities are considered, including other Federal agency and nonfederal facilities and services;

(b) Agency rules do not require that priority be given to the use of in-house facilities;

(c) The user of the application has primary responsibility for selecting the facility; and

(d) Each selection decision is documented in the agency's official records.

6. *Assignment of Responsibilities.*

a. *All Federal Agencies.* The head of each agency shall:

(1) Establish policies and procedures and assign responsibilities to implement the requirements of this appendix; and

(2) Ensure that contracts awarded for the operation of information technology facilities include provisions for compliance with the requirements of this appendix.

b. *General Services Administration.* The Administratior of General Services shall:

(1) Ensure that information technology facilities designated as Federal Data Processing Centers comply with the procedures established by this appendix;

(2) Ensure that provisions consistent with this appendix are included in contracts for the operation of information technology facilities when acquiring services on behalf of an agency;

7. *Implementation Requirements.* Agencies shall implement the provisions of this appendix within 180 days of the publication of this Circular.

Appendix III—Security of Federal Automated Information Systems

1. *Purpose.* This appendix establishes a minimum set of controls to be included in Federal automated information systems security programs; assigns responsibilities for the security of agency automated information systems; and clarifies the relationship between such agency security programs and internal control systems established in accordance with OMB Circular No. A-123, Internal Control Systems. The appendix revises procedures formerly contained in Transmittal Memorandum No. 1 to OMB Circular No. A-71, now rescinded, and incorporates provisions from applicable national security directives.

2. *Definitions.*

a. The term "automated information system" means an information system (defined in section 6d of the Circular) that is automated.

b. The term "information technology installation" means one or more computer or office automation systems including related telecommunications, peripheral and storage units, central processing units, and operating and support system software. Information technology installations may range from information technology facilities such as large centralized computer centers to individual stand-alone microprocessors such as personal computers.

c. The term "sensitive data" means data that require protection due to the risk or magnitude of loss or harm that could result from inadvertent or deliberate disclosure, alteration, or destruction of the data. The term includes records about individuals requiring protection under the Privacy Act, proprietary data, and data not releasable under the Freedom of Information Act, as well as agency data that affect the agency's mission.

d. The term "sensitive application" means an application of information technology that requires protection because it processes sensitive data, or because of the risk and magnitude of loss or harm that could result from improper operation or deliberate manipulation of the application.

e. The term "security specifications" means a detailed description of the safeguards required to protect a sensitive application.

3. *Automated Information Systems Security Programs.* Agencies shall assure an adequate level of security for all agency automated information systems, whether maintained in-house or commercially. Specifically, agencies shall:

—Assure that automated information systems operate effectively and accurately;

—Assure that there are appropriate technical, personnel, administrative, environmental, and telecommunications safeguards in automated informations systems; and

—Assure the continuity of operation of automated information systems that support critical agency functions.

Agencies shall implement an automated information systems security program, including the preparation of policies, standards, and procedures. This program will be consistent with governmentwide policies, procedures, and standards issued by the Office of Management and Budget, the Department of Commerce, the Department of Defense, the General Services Administration, and the Office of Personnel Management. Agency programs shall, at a minimum, include three primary elements: applications security, personnel security, and information technology installation security.

a. *Applications Security.*

(1) *Management Control Process and Sensitivity Evaluation.* Agencies shall establish a management control process to assure that appropriate administrative, physical, and technical safeguards are incorporated into all new applications, and into significant modifications to existing applications. Management officials who are the primary users of applications should evaluate the sensitivity of new or existing applications being substantially modified. For those applications considered sensitive, the management control process shall, at a minimum, include security specifications and design reviews and systems tests.

(a) *Security Specifications.* Agencies shall define and approve security requirements and specifications prior to acquiring or starting formal development of the applications. The results of risk analyses performed at the information technology installation where the applications will be processed should be taken into account when defining and approving security specifications for the applications. Other vulnerabilities of the applications, such as in telecommunications links, shall also be considered in defining security requirements. The views and recommendations of the information technology user organization, the information technology installation, and the individual responsible for security at the installation shall be considered prior to the approval of security specifications for the applications.

(b) *Design Reviews and System Tests.* Agencies shall conduct and approve design reviews and system tests, prior to placing the application into operation, to assure the proposed design meets the approved security specifications. The objective of the system tests should be to verify that required administrative, technical, and physical safeguards are operationally adequate. The results of the design reviews and system tests shall be fully documented and maintained in the official agency records.

(c) *Certification.* Upon completion of the system tests, an agency official shall certify that the system meets all applicable Federal policies, regulations, and standards, and that the results of the tests demonstrate that the installed security safeguards are adequate for the application.

(2) *Periodic Review and Recertification.* Agencies shall conduct periodic audits or reviews of sensitive applications and recertify the adequacy of security safeguards. Audits or reviews shall evaluate the adequacy of implemented safeguards, assure they are functioning properly, identify vulnerabilities that could heighten threats to sensitive data or valuable resources, and assist with the implementation of new safeguards where required. They are intended to provide a basis for recertification of the security of the application. Recertification shall be fully documented and maintained in the official agency records. Audits or reviews and recertifications shall be performed at least every three years. They should be considered as part of agency vulnerability assessments and internal control reviews conducted in accordance with OMB Circular No. A-123. Security or other control weaknesses identified shall be included in the annual internal control assurance letter and report required by Circular No. A-123.

(3) *Contingency Plans.* Agencies shall establish policies and assign responsibilities to assure that appropriate contingency plans are developed and maintained by end users of information technology applications. The intent of such plans is to assure that end users can continue to perform essential functions in the event their information technology support is interrupted. Such plans should be consistent with disaster recovery and continuity of operations plans maintained by the installation where the application is processed.

b. *Personnel Security.* Agencies shall establish and manage personnel security policies and procedures for screening all individuals participating in the design, development, operation, or maintenance of Federal automated information systems. The level of screening required by these policies should vary from minimal checks to full background investigations, depending upon the sensitivity of the information to be handled and the risk and magnitude of loss or harm that could be caused by the individual. These policies shall be established for both Federal and contractor personnel. Personnel security policies for Federal employees shall be consistent with policies issued by the Office of Personnel Management.

c. *Information Technology Installation Security.* Agencies shall assure that an appropriate level of security is maintained at all information technology installations operated by or on behalf of the Federal government (e.g., government-owned, contractor-operated installations).

(1) *Assigning Responsibility.* Agencies shall assign responsibility for the security of each installation to a management official knowledgeable in information technology and security matters.

(2) *Periodic Risk Analysis.* Agencies shall establish a program for the conduct of periodic risk analyses at each installation to ensure that appropriate, cost effective safeguards are incorporated into existing and new installations. The objective of a risk analysis is to provide a measure of the relative vulnerabilities and threats to an installation so that security resources can be effectively distributed to minimize potential loss. Risk analyses may vary from an informal review of a microcomputer installation to a formal, fully quantified risk analysis of a large scale computer system. The results of these analyses should be documented and taken into consideration by management officials when certifying sensitive applications systems processed at the installation. Such analyses should also be consulted during the evaluation of general controls over the management of information technology installations conducted in accordance with OMB Circular No. A-123. A risk analysis shall be performed:

(a) Prior to the approval of design specifications for new installations;

(b) Whenever a significant change occurs to the installations (e.g., adding a local area network; changing from batch to online processing; adding dial-up capability). Agency criteria for defining significant change shall be commensurate with the sensitivity of the data processed by the facility.

(c) At periodic intervals established by the agency commensurate with the sensitivity of the data processed, but not to exceed every five years if no risk analysis has been performed during that period.

(3) *Disaster and Continuity Plan.* Agencies shall maintain disaster recovery and continuity of operations plans for all information technology installations. The objective of these plans should be to provide reasonable continuity of data processing support should events occur that prevent normal operations at the installation. For large installations, the plans should be fully documented and operationally tested periodically, at a frequency commensurate with the risk and magnitude of loss or harm that could result from disruption of information technology support.

(4) *Acquisition Specifications.* Agencies shall establish policies and responsibilities to assure that appropriate technical, administrative, physical, and personnel security requirements are included in specifications for the acquisition or operation of information technology installations, equipment, software, and related services, whether procured by the agency or by GSA. These security requirements shall be reviewed and approved by the management official responsible for security at the installation making the acquisition.

d. *Training Programs for Automated Information Systems Security.* Agencies shall establish a security awareness and training program to assure that agency and contractor personnel involved in the management, operation, programming, maintenance, or use of information technology are aware of their security responsibilities and know how to fulfill them. Users of information technology systems should be apprised of the vulnerabilities of such systems and trained in techniques to enhance security.

4. *Assignment of Responsibilities.*

a. *Department of Commerce.* The Secretary of Commerce shall:

(1) Develop and issue standards and guidelines for assuring the security of Federal automated information systems; and

(2) Provide technical assistance to Federal agencies in implementing those standards and guidelines.

b. *Department of Defense.* The Secretary of Defense shall:

(1) Act, in accordance with applicable national security directives, as executive agent of the government for the security of automated information systems that process information the loss of which could adversely affect the national security interest; and

(2) Provide technical material and assistance to Federal agencies concerning security of Federal automated information systems, including acquisition and use of encryption devices approved by the

National Security Agency for telecommunications security.

c. *General Services Administration.* The Administrator of General Services shall:

(1) Issue policies and regulations for the physical and environmental security of computer rooms in Federal buildings consistent with standards issued by the Department of Commerce and the Department of Defense.

(2) Assure that agency procurement requests for computers, software, telecommunications services, and related services include security requirements. Delegations of procurement authority to agencies by GSA under mandatory programs, dollar threshold delegations, certification programs, or other so-called blanket delegations shall include requirements for agency specification of security requirements.

(3) Assure that information technology equipment, software, computer room construction, guard or custodial services, telecommunications services, and any other related services procured by GSA meet the security requirements established and specified by the user agency and are consistent with other applicable policies and standards issued by OMB, the Department of Commerce, the Department of Defense, and the Office of Personnel Management.

d. *Office of Personnel Mongement.* The Director, Office of Personnel Management, shall establish personnel security policies for Federal personnel associated with the design, programming, operation, maintenance, or use of Federal automated information systems. Requirements for personnel checks imposed by these policies should vary commensurate with the risk and magnitude of loss or harm that could be caused by the individual. The checks may range from merely normal reemployment screening procedures to full background investigations.

5. *Reports.* In their annual internal control report to the President and the Congress, required under OMB Circular No. A-123, agencies shall:

a. Describe any material weaknesses identified during audits or reviews of sensitive applications or when conducting risk analyses of installations; and

b. Provide assurance that there is adequate security of agency automated information systems.

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[**Note:** This reprint incorporates editorial corrections that are published in the **Federal Register** of Thursday, March 21, 1985.]

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B. Comments of Representative Glenn English, Chairman, Government Information, Justice, and Agriculture Subcommittee Regarding Draft Circular

GLENN ENGLISH, OKLAHOMA, CHAIRMAN

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NINETY-NINTH CONGRESS
Congress of the United States
House of Representatives
GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
B-349-C Rayburn House Office Building
Washington, DC 20515

May 15, 1985

Mr. Douglas H. Ginsburg
Administrator for Information
  and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Ginsburg:

Thank you for sending me a copy of the draft OMB Circular on the management of federal information resources. I have reviewed the draft with a primary focus on the sections that address access to or disclosure of information and on the appendix concerning the Privacy Act of 1974. My comments are limited to sections 7, 8 and Appendix I.

Overall, I find the principles set out in the circular to be very general and therefore very difficult to evaluate in the abstract. There is nothing in the circular that indicates how the principles would be applied by agencies in practice or what specific programs would be affected.

I believe that the uncertainty over the application of the information management principles is a major cause of a good deal of the outcry over the circular. Someone who relies regularly on a government publication can find nothing in the draft that constitutes reasonable assurance that the publication will be continued. This uncertainty extends to all government publication programs, major and minor.

The circular is also being measured against the background of four years of Reagan Administration cutbacks in information programs, limitations on public availability of government data, and curtailment of access to government officials. These information restrictions have generated continuing controversy on Capitol Hill and throughout the United States. Many fear that the circular is just another attempt to institutionalize government control over public debate.

If this is not the intent of the circular, then significant changes will be needed in order to demonstrate that "management of federal information resources" is not simply a code word for additional restrictions on the availability of information to the public.

My specific comments are contained in the attachment to this letter. In working on the revision of the draft circular, I recommend that OMB identify several dozen significant existing or planned agency information dissemination programs. OMB should evaluate these programs according to the standards proposed in the circular. I believe that this exercise will show that these standards cannot be applied to produce consistently rational results. This process will also help in the formulation of more meaningful guidance.

There are enough difficult issues raised but not resolved by the circular to warrant a complete revision. When all of the comments have been considered and the circular has been rewritten, I recommend most strongly that the revised circular be reissued for another round of public comments.

If you have any questions about this letter or my comments, please contact Subcommittee counsel Robert Gellman.

Sincerely,

Glenn English
Chairman

COMMENTS OF REP. GLENN ENGLISH, CHAIRMAN, SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE AND AGRICULTURE

Draft OMB Circular on Management of Federal Information Resources, 50 Fed. Reg. 10733 (Mar. 15, 1985)

1. Basic Considerations and Assumptions (Section 7)

The circular's basic considerations and assumptions completely fail to reflect the importance, value, and role of information, and especially government information, to American democracy and to American society in general.

Public access to government information is essential to the operation of a democracy. Informed public debate is the basis of our form of government and is the bedrock of the First Amendment to the Constitution. These values are reflected in numerous laws guaranteeing citizens a right of access to government information, such as the Freedom of Information Act, the Government in the Sunshine Act, and the law establishing the Federal Depository Library Program.

Instead of a clear statement of the value of government information to the American system of government, section 7(c) states myopically: "The value of government information to the government is solely a function of the degree to which the information contributes to achieving agencies' missions."

This is an accountant's view of the value of information on a balance sheet rather than a statement of the importance of government information to a democracy. The attitude reflected in section 7(c) appears to be the same one that has led the Reagan Administration to propose or to implement so many restrictions on the ability of citizens to learn what the government is doing.

Some general recognition of the importance of government information can be found in section 7(b), which states that government information is a valuable resource to the government, to its citizens, and to the economy. However, even section 7(b) contains only a brief, seven word reference to the value of government information to citizens ("provides citizens with knowledge of their society").

This is wholly inadequate as an acknowledgement of the multitude of ways in which government information is used today by the Congress, policy analysts, social scientists, economists, academics, researchers, scholars, and others. It contains no reference at all to the use of information in the political process. There is no statement about the importance of information in maintaining the accountability of government and of government activities, policies, and operations.

Section 7(f) states that the public's right to access to government information must be protected. As recognition of the need to preserve access to records under the Freedom of Information Act, this provision is adequate. However, it is not a substitute for an acknowledgement of the broader uses of government information.

Moreover, the FOIA cannot always be relied upon to provide a complete backstop for the public's need for government information. Agencies are not required to compile information in order to respond to a FOIA request. When data is maintained in a computer system, for example, an agency can avoid disclosure by refusing to reprogram its computers to provide requested data. Thus, in the absence of some effective dissemination programs, there can be an effective denial of access notwithstanding the FOIA.

The circular needs to state that public disclosure of government information is essential to the operation of a democracy. The circular needs to state that government information is a valuable resource for a wide range of users. The circular needs to state that government information should be publicly available in the absence of an important public or private interest in secrecy.

The reason why explicit recognition of all of the collateral uses of government information is so important can be found in section 7(d). That section requires that the public and private benefits from government information must exceed the public and private costs of the information. The value of government information programs is hard to evaluate through any simplistic cost-benefit standard.

I am concerned that any mechanical cost-benefit approach to information programs will produce incomplete and misleading results, and I recommend that section 7(d) be deleted. The costs of government information are relatively easy to calculate but the benefits are much harder to identify and quantify. As a result, there will be an inherent bias against information programs that will be difficult to overcome.

An illustration of the difficulty of evaluating the value of the benefits that result from disclosure can be found in the experience with fee waivers under the FOIA. That Act requires fee waivers when disclosure of information is in the public interest because furnishing the information can be considered as primarily benefiting the general public. This standard has been a constant source of conflict, and there is evidence suggesting that some agencies deny fee waivers as a way of discouraging requests for information that the agencies prefer to withhold. Institutionalizing the evaluation of the benefits of disclosure is likely to make the problems worse.

As a second-best alternative to the deletion of section 7(d), I recommend that the circular include a clearer, stronger, and more complete acknowledgement of the wide range of uses of government. Section 7(h) is a step in the right direction, but more needs to be done.

In addition, if agencies are required to consider costs and benefits, there should be more explicit procedural requirements to ensure that all benefits are identified and fairly priced before any programs are changed. Even the fine words of section 7(h) provide no guidance on how to calculate the benefits of an "open and efficient exchange of government scientific and technical information." Agencies should be specifically required to identify their cost-benefit methodology and to seek and consider public comments. Ensuring uniform methodology and pricing of benefits is an issue that OMB will have to confront if the cost-benefit approach is retained.

2. Policies (Section 8)

Section 8(a)(1) and (3) state in part that information should only be collected when necessary to achieve agency mission objectives. The collection of personal information is governed by the Privacy Act of 1974. Subsections (e)(1) and (e)(2) of the Act contain information collection and maintenance limitations that differ somewhat from -- but admittedly do not conflict with -- the provisions of section 8(a)(1) and (3) of the circular. To the extent that these provisions affect collection of personal information, it would be appropriate to revise the circular so that its language conforms more precisely with the language of the Privacy Act.

Section 8(a)(2) proposes that agencies seek to satisfy new information needs through interagency sharing of information. Again, the Privacy Act imposes some limitations both on collection and disclosure of personal information by agencies. See subsection (e)(2) of the Privacy Act (providing that information should be collected to the greatest extent practicable from the subject individual) and subsection (b)(3) (disclosures pursuant to routine use). The limitations of the Privacy Act need to be incorporated in the circular.

Also, there is a suggestion in section 8(a)(2) that commercial sources be used to obtain information. To the extent that this applies to personal information, it needs to be reconsidered in light of Privacy Act collection limitations. If this provision is retained at all, it needs to be carefully qualified. The use of commercial information sources in the past has been especially controversial (e.g. IRS use of mailing lists) or has required specific authorizing legislation (e.g. the Debt Collection Act of 1982).

Section 8(a)(4)(b) refers to "violations of obligations of confidentiality." The use of the word "obligations" here is unfortunately ambiguous. It could be read to refer either to a statutory requirement for protection of confidentiality or to an ad hoc agency commitment to maintain confidentiality. This second interpretation is potentially troublesome.

Under the FOIA and other laws, standards for confidential treatment of proprietary information are established by statute. An agency does not have any authority to make agreements to withhold information not protectable under the statutory standard. Any suggestion that an agency can make an obligation of confidentiality that differs from the law could be misleading. I suggest that the circular delete the words "obligations of".

Section 8(a)(5) refers to providing individuals with "reasonable access to" records consistent with the Privacy Act. An individual can also use the FOIA to obtain access to records about himself, and the circular should reference both Acts in connection with individual access rights. Also, the use of the qualifier "reasonable" here is puzzling. There is no similar qualification in section 8(a)(6) relating to public access to information under the Freedom of Information Act. I suggest that the word "reasonable" be deleted.

Sections 8(a)(8) and (9) establish standards for the dissemination of government information products and services. This is probably the most controversial part of the circular, and it raises more questions than it answers. Both sections need considerable rethinking.

Section 8(a)(8) would allow dissemination of government information products and services under only two conditions. The first is when dissemination is "required by law". This seems unobjectionable, but what does "required by law" mean? For example, the statute creating the Department of Agriculture assigned it the duty of acquiring and diffusing among the people of the United States useful information on subjects connected with agriculture and rural development (7 U.S.C. §2201). Are all Agriculture Department information programs required by law? It is not at all clear from the circular or from the statute.

One consequence of a "required by law" standard will be more legislation requiring specific dissemination programs. If a statute provides the only "safe harbor" for dissemination programs, then agencies and consumers of the programs will seek legislative authorization. If these attempts are successful -- and some will result in new statutes -- it will be more difficult in the future to review dissemination programs at the administrative level.

The second circumstance that would permit a government dissemination program is when dissemination is essential to an agency's mission. This provision is very troublesome. To begin with, there is no definition of "essential". If Department of Agriculture dissemination programs are not considered to be "required by law", are they then necessarily essential to the agency's mission? Is it possible that dissemination programs under 7 U.S.C. §2201 are neither "required by law" nor "essential"? Who makes the judgment: the agency or OMB?

Even if essential, the circular provides an agency may not have a dissemination program if similar products or services are already provided by other government or private sector organizations. It is reasonable to prevent agencies from competing unfairly with private sector information companies. However, the crude standard proposed in the circular is inadequate.

A private sector information product or service may not, by its mere existence, fulfill the mission of an agency. Suppose a private sector information service duplicates an agency service but at a price that is much higher than the agency charges. Will a private sector service fulfill the agency's mission if few of the agency's clients can afford to use it? Suppose the private service is only available to those with the capability to use computer terminals? In evaluating a potentially duplicative private sector service, should an agency consider the price of the service and the ability of some users to access it? The circular offers no guidance on this point.

Suppose a private company is willing to provide the part of an information service that has a sufficient market to generate profits. Should an agency only offer the unprofitable (but still essential) service? If the costs of providing partial service are the same as the costs of a more complete service, should an agency still defer to the private sector for the profitable services? As the market for information develops, should an agency change its service to accomodate the changing services offered by private companies?

The circular would also prevent an agency from providing an information product or service if the product or service "could reasonably be expected to be provided" by others in the absence of an agency activity. What constitutes a reasonable expectation? How can an agency be expected to forego a dissemination program that is essential to its mission on the grounds that someone else can be expected to provide it? What if a reasonable expectation turns out to be wrong?

Can an agency consider the cost and difficulty of restoring its information program if a private information service fails? Many private information services that are offered are dropped if a sufficient market does not develop. For example, a recent report in *Business Week* indicated that a record number of public data bases were discontinued last year.

Should the same standards apply to both existing and proposed agency information programs? Is it reasonable to ask an agency to end a successful dissemination program on the representation of a private sector company that it will offer a duplicative service in the future? If a company duplicates or intends to duplicate an agency service *in part*, should the agency stop offering that part of its service?

A major problem with the rules for agency dissemination programs is that the goals of the circular are disjointed. One goal is avoiding government competition with private sector information products and services. Another goal is the preservation of agency information programs that are essential to an agency's mission. There is an unstated assumption that any private sector information service or product that duplicates an agency service or product will necessarily fulfill an agency's mission. This assumption is unproved and will certainly be wrong in many instances.

Both goals are reasonable, but the approach of section 8(a)(8) is too crude. The circular should focus on the terms of competition not just the existence of competition. Government can be and probably should be discouraged from competing but, in many cases, the government will necessarily be a presence in an information market. Even the circular recognizes this. Government has a role, and it can provide the benefits of competition if it is prevented from competing unfairly. A more realistic goal is the elimination of unfair competition by government rather than the elimination of competition totally.

Also, information products and services should not necessarily be lumped together and treated with the same standards. Different rules might well apply to different types of products and services. Dissemination programs might be divided into components and agencies might be discouraged from offering communications or value-added services. Information collection and compilation might continue with fewer restrictions.

Information disseminated on paper may have to be treated differently than information disseminated by electronic means. It appears that electronic data systems may present a range of information issues that are considerably different than the issues presented by hard-copy dissemination.

Also, a different analysis may be appropriate for existing products and services than for proposed new products and services. Political realities certainly suggest that it is easier to prevent a new information system from being established than to shut down a system that has an entrenched set of employees and customers.

It is worth observing that the examples (cited in the analysis on page 10735) of information not suitable for government dissemination systems include information for which there is no present dissemination program and which is either trivial or of interest to an extremely narrow group. OMB avoided the hard issue by failing to provide an example of an existing dissemination program that fails to meet the standards of the circular and should accordingly be eliminated.

Section 8(a)(9) sets several general standards for the dissemination of government information products and services that pass through the screen of section 8(a)(8). One of these standards is cost effectiveness for the government, "including placing maximum feasible reliance on the private sector for the dissemination of products or services."

It is not entirely clear what is meant in this section by cost effective or whether cost effectiveness will necessarily be consistent with maximum reliance on the private sector. In some instances, the most cost effective program will be one that generates the most revenues from users. But a program that generates the most revenues for the government may include little or no role for the private sector. This potential inconsistency should be resolved more clearly in the circular rather than left to the agencies.

Section 8(a)(9)(d) requires agencies to establish procedures for periodically reviewing the continued need for and manner of dissemination of products and services. These procedures need to be spelled out in more detail. I recommend that OMB require agencies to use a notice and comment procedure prior to making any decision to terminate a dissemination program. Notice should include publication in the Federal Register as well as specific notification to known subscribers, users of the services, and appropriate congressional committees. It would also be appropriate to require agencies to provide advance notice of proposals to establish new dissemination systems.

Agencies facing the need to terminate dissemination programs because of budget cutbacks should allow information users to have a stronger voice in establishing priorities for agency publications. There should also be a requirement that agencies provide adequate advance notification of any actual termination decision (in addition to notice prior to making such a decision). As the frequency of publication decreases, the amount of advance notice should increase. The notice of termination will allow users to seek new sources and potential suppliers to consider offering new services.

Additionally, I think that the dissemination policy in the circular fails to address squarely the Federal Depository Library program. This program is a cheap and effective way of making government publications widely available. When publication programs are terminated because of the policies in the circular, there will be nothing to replace the loss to depository libraries.

There is also a need to confront the future of depository libraries in an age where more and more information is maintained electronically in data bases. If these data bases are not made available in some fashion, then the whole depository library program will be undermined. This will not be an easy problem to solve, and I do not believe that it must be solved before the circular is finalized. But it should receive some attention soon.

The analysis preceding the text of the circular urges increased reliance on the depository library program as an alternative to new dissemination programs. Depository libraries receive copies of government publications. But the circular urges termination of government dissemination programs and dissemination is defined to include publication. Thus, notwithstanding the advice in the analysis, the circular's emphasis on reducing dissemination can reduce the availability of information to depository libraries.

There are several other points relating to dissemination that are absent from the circular. First, government information policy is shaped to a significant degree by the values reflected in the First Amendment to the Constitution. Yet the First Amendment is not referenced or discussed in the section on basic considerations and assumptions.

Second, government dissemination programs are also shaped to a significant degree by the statutory prohibition against the copyright of information by the government. This prohibition is an important -- though not well-recognized -- element of our openness in government laws. The inability of government to copyright data restricts agencies from selling information collected at taxpayer expense for a price based on the value of the information or the cost of collection. As a result, government is generally only able to charge user fees that reflect the cost of dissemination. The effect of this limitation on government control over its own information is important and should be reflected in the circular.

Third, the analysis to the circular discusses at several places the need to avoid giving contractors monopoly control over government information. However, this very important point is not clearly reflected in the text of the circular.

3. *Implementation of the Privacy Act* (Appendix I)

The appendix proposes to eliminate reports required under subsection (o) of the Privacy Act when minor changes are made to systems of records. The concept of a "minor change" is not included in the Privacy Act itself and appears in this appendix for the first time.

I am not sure if this limitation on the reporting requirement is entirely consistent with the Act, but I do not have any objection to it. However, I recommend that a more comprehensive list of examples of "minor changes" be included. Ideally, the list of minor changes in the definition and of major changes in section 4(b)(1) should be exhaustive. I want to avoid any possibility of future disputes over what types of changes required reports.

The review of contracts subject to the Privacy Act under subsection (m) is an excellent idea. However, if only a random sample of contracts is to be reviewed, I recommend that it be done more frequently than every five years. There has been little oversight of subsection (m), and I think that a review every two years -- especially if done by random sample -- would not be too burdensome.

I applaud the requirement that routine uses be reviewed periodically. I suggest that agencies be required to conduct the first review imemdiately. It would also be nice if the review were accompanied by more specific guidance from OMB on just what constitutes a routine use. This guidance is long overdue. See Committee on Government Operations, *Who Cares About Privacy? Oversight of the Privacy Act of 1974 by the Office of Management and Budget and by the Congress*, H.R. Rep. 98-455 (1983).

The requirement for a review of Privacy Act cases involving civil or criminal liability is also good. However, since findings of either civil or criminal liability under the Privacy Act are rare enough, I would recommend that the review be conducted immediately after a case is lost by the government rather than annually. There is no reason to allow identified problems to fester any longer than is necessary.

C. "MANAGEMENT OF FEDERAL INFORMATION RESOURCES: A GENERAL CRITIQUE OF THE MARCH 1985 OMB DRAFT CIRCULAR—MATTERS FOR POSSIBLE CONGRESSIONAL CONSIDERATION," CONGRESSIONAL RESEARCH SERVICE, JULY 5, 1985

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

MANAGEMENT OF FEDERAL INFORMATION RESOURCES: A GENERAL CRITIQUE OF THE MARCH 1985 OMB DRAFT CIRCULAR— MATTERS FOR POSSIBLE CONGRESSIONAL CONSIDERATION

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MANAGEMENT OF FEDERAL INFORMATION RESOURCES: A GENERAL CRITIQUE OF THE MARCH 1985 OMB DRAFT CIRCULAR— MATTERS OF POSSIBLE CONGRESSIONAL CONSIDERATION

INTRODUCTION

On March 15, 1985, the Office of Management and Budget (OMB) published a draft circular 1/ the purpose of which was "to provide a general framework for management of Federal information resources." 2/ OMB requested that comments and suggestions from the public regarding this circular be submitted no latter than May 14, 1985. After receiving such comments, OMB will consider revising the circular and either republishing it for additional comment or issuing it in final form.

Certain operative OMB circulars were updated and combined in the text of the draft circular. The proposal also detailed OMB authority over all information-gathering efforts by Federal agencies. As recent press accounts have indicated, both the specification of this authority and the implications of its exercise have provoked considerable controversy. 3/ Supporters of the draft circular contend that billions of dollars could be saved through OMB regulation of the unnecessary gathering and dissemination of information. Opponents argue that the value of government information cannot be measured by its cost alone, that certain civic values are served by such information, and that limits on its flow might well result in a reduction of government accountability.

1/ Federal Register, v. 50, March 15, 1985, p. 10734-10747.

2/ Ibid., p. 10734

3/ See Martin Tolchin. U.S. Plans Cut in Data Collection and Distribution. New York Times, March 31, 1985, p. 1, 26; Keith B. Richburg. OMB Seeks Restrictions on Agency Studies. Washington Post, April 26, 1985, p. A21.

An analytical evaluation of OMB's draft circular on the management of Federal information resources is made difficult for two reasons. First, the policy considerations set out in the circular are very general and, therefore, difficult to assess. Second, there is little in the circular to indicate how the policy considerations would be applied in practice or what specific programs would be affected. Thus, analysis of the draft circular necessarily cannot be detailed. After providing some background information on the development of the OMB proposal, this critique examines the way the current draft addresses four issue areas: general management, public access to government information, personal privacy, and information systems and technology management, and raises some issues and questions for further consideration.

BACKGROUND

In September 1983, the Office of Management and Budget announced that it was planning to revise and consolidate the following four operative circulars into a single directive dealing with the management of Federal information resources:

A-71	"Responsibilities for the Administration and Management of Automatic Data Processing Activities" (including Transmittal Memorandum No. 1 to Circular A-71 "Security of Federal Automated Information Systems")
A-90	"Cooperating with State and Local Governments to Coordinate and Improve Information Systems"
A-108	"Responsibilities for the Maintenance of Records about Individuals by Federal Agencies"
A-121	"Cost Accounting, Cost Recovery, and Interagency Sharing of Data Processing Facilities" 4/

4/ Federal Register, v. 48, September 12, 1983, p. 40964-40965.

In its notice, OMB said it not only wished "to solicit public views on revision and consolidation of matters covered in the four existing Circulars," but also sought "comments on how and whether the new Circular should be broadened so that the consolidated product will be fully representative of Federal information management policy." 5/ OMB offered sixteen issues in its notice which were "intended to be suggestive of the kinds of questions it may be appropriate to address in a policy directive, to encourage discussion and to stimulate recommendations for other issue areas that might be considered." These included the following items:

1. General Principles of Information Resources Management.
2. Competition with the Private Sector.
3. Information Processing Standards
4. Inter-Agency Sharing of Data Processing Facilities; Access to Alternative Facilities.
5. Cost Accounting Procedures for Data Processing.
6. Least Overall Systems Life Cost.
7. User Charges for Information Products and Services.
8. Software Management.
9. Long-Range Planning Process.
10. Microcomputer Technology, End-User Computing and Office Automation.
11. Information Technology for Data Collection.
12. Security of Automated Information Systems.
13. Maintenance of Records about Individuals.
14. Maintenance of Federal Records.
15. Roles of Suppliers, Consumers, and Managers of Information Technology.

5/ Ibid., p. 40964.

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16. Avoiding Development of Redundant Administrtive and Management Systems. 6/

Following the November 14, 1983 deadline for responses to its notice, OMB prepared a summary analysis of the comments received from 53 respondents, among which were 14 Federal agencies, 18 libraries and universities, and 21 members of the public. 7/ This analysis was subsequently distributed to senior officials having responsibility for management of information resources within the executive branch. 8/

According to the OMB summary, three of the sixteen issues for which comment was solicited "received the majority of responses and created the most controversy." These were "General Principles of Information Resources Management," "Competition with the Private Sector," and "User Charges for Information Products and Services." Each is discussed briefly below.

General Principles

The principle that "information is not a free good but a resource of substantial economic value and should be treated as such," according to the OMB memorandum, "drew strong reactions from the university and library community." These comments, OMB stressed, "carried the same thread: the fear that such a policy emphasizing such a principle would restrict the free flow of information in this country." 9/

6/ Ibid., p. 40964-40965.

7/ U.S. Office of Management and Budget. Office of Information and Regulatory Affairs. Inforamtion Policy Branch. Analysis of Public Comments to Federal Register. Notice of September 12, 1983. Washington, 1984. [Hereafter cited as OMB Analysis]

8/ U.S. Office of Management and Budget. Memorandum for Senior Officials for information Resources Management, from Christopher DeMuth. Administrator for Information and Regulatory Affairs, Jan. 27, 1984. Washington, 1984.

9/ OMB Analysis, p. 2.

Competition With the Private Sector

"Most commentors," OMB noted, "recognize the need to establish a balance between the public and private sectors to avoid competition while ensuring that society's information needs are met." OMB Circular A-76, which was not included in the initial revision and consolidation effort, prescribes policy under which the Federal Government shall not compete unfairly with the private sector in the acquisition of goods and services for its use.

Nonetheless, according to the OMB analysis, comments on this point reflected opposing positions. The Information Industry Association, representing a large number of private information companies, urged that the new circular supplement A-76 because it was "concerned that government agencies have attempted or will attempt to repackage information themselves in new forms or formats and provide information services to the public in direct competition with commercial vendors and developers." 10/ By contrast, "Library and university respondents," the OMB analysis said, "caution that the private sector role should not be overemphasized to the detriment of the public's 'right to know' nor do they believe that profit by the private sector should be made at the public's expense." 11/ A middle ground position was taken by Federal agencies.

> Federal agencies do not support including information services in Circular A-76 where emphasis is totally on economics. Guidelines should fully address the concept of "public goods;" that much information while not free should be wholly or partially underwritten as a public investment and common good. Several reflect the view that the Federal Government is not competing unfairly with the private sector—rather they are stimulating it—since the latter can take freely disseminated information and turn this resource into substantial gain. The governmentally disseminated information thus protects the public good by ensuring equal access, while allowing value-added commercial application. 12/

10/ Ibid., p. 3.

11/ Ibid., p. 5.

12/ Ibid.

User Charges

Comments from the Information Industry Association and individual information companies indicated, according to OMB, "that the government generally ought not to offer information products and services in the marketplace, but if it does, it should set prices in a manner that diminishes competition with the private sector." 13/ It was the consensus of commentors other than the private information companies "that user charges for government information products and services should not be artificially inflated to market value." These charges, it was felt, "should include only those costs incurred by the government over and above the government's own requirements (i.e., reproduction and/or access costs), and should not include creation costs incurred in fulfillment of an agency's mission—particularly in the case of disseminating scientific and technical information." 14/

Still another set of views was summarized in the following paragraph from the OMB summary analysis:

> Federal agency thought is reflected in Interior's statement that a policy on user charges should consider the fact that many information products and services are both public and private goods. Basic research activities, unless requested and paid for by specific clientele, usually can be considered public goods. Consequently, the costs of such activities should be, and generally are, covered by appropriated funds, not by user charges. In contrast, reproduced information products, including expert services (if directly requested), usually have the attributes of private goods and could be managed like a private sector business. This would require government agencies supplying information products to charge a price to specific clientele that would recover the full costs of reproduction and distribution. In other cases, such as the provision of reproduced information products to depository libraries, government information is being provided to meet a general public need, and the appropriate charge, consistent with current public finance concepts, is zero. 15/

13/ Ibid., p. 5.

14/ Ibid., p. 6.

15/ Ibid.

Finally, the OMB analysis indicated that the public library and university community feared that the "inflated costs for government information products and services would restrict information to those who can afford it." 16/

After reviewing these matters of disparate and sharply conflicting opinion, the OMB analysis discussed other issue items and comments made regarding them. Subsequently, the draft Federal information resources management circular emerged from these considerations and was published on March 15, 1985, for public comment.

16/ Ibid., p. 7.

CRITIQUE OF THE 1985 DRAFT CIRCULAR

GENERAL MANAGEMENT

The concept of "information resources management" can be traced to the Commission on Federal Paperwork, a temporary national advisory panel created in 1974 to "study and investigate statutes, policies, rules, regulations, procedures, and practices of the Federal Government relating to information gathering, processing, and dissemination, and the management and control of these information activities." 17/ The Paperwork Commission issued a series of reports, including one published in 1977 concerning information resources management. The following paragraphs from that report provide an understanding of this new concept.

> A substantial amount of Federal paperwork can be laid at the door of unplanned, uncoordinated and unevaluated requirements. Information, and consequently paperwork, is easily abused because officials can collect, hoard and proliferate it with impunity as costs are hidden in program and overhead accounts. The biggest cost of all, the direct cost to the citizen respondents, does not even show up in the accounts.
>
> Thus the real culprit of the paperwork burden is mismanagement of information resources. Government has tended to regard information as a relatively free and limitless commodity, like air and sunshine, simply ours for the asking. We must realize, where we have not already done so, that this is not the case. Information is a vital resource to the public and private enterprise alike. Moreover, it is a resource in limited supply, often costly to locate, extract and refine. It exists in a variety of raw forms (data), and may or may not be cost-efficient to acquire and deliver. Like its mineral resource counterpart, it is sometimes not as valuable as we may think.

17/ 88 Stat. 1789.

Management in industry or government requires the careful consideration and selection of the best mix of resources and tools from the wide array usually available. For example, when a program manager decides to employ a questionnaire in lieu of other methods to collect information, he is making a resource decision. The decision to employ manual, paperwork-intensive methods—involving substantial recordkeeping and reporting requirements rather than computer-intensive methods—is not unlike the decision to use steel rather than poured concrete.

Historically, when a resource is identified, a management function has been established to deal with the problem. Officials in charge of management function planned, programmed, budgeted, accounted for, audited and evaluated the resource according to prescribed principles and practices. That set of principles and practices (a body of doctrine) is called resource management. For data and information resources, no central, cohesive body of doctrine exists today; there is not even good information, advice or guidance to offer top management. 18/

When Congress legislated the Paperwork Reduction Act in 1980, the management of information resources was addressed primarily in section 3504 of the statute which vested in the Director of OMB a number of pertinent duties and responsibilities. 19/ The draft OMB circular cites this section of the law and would give the Director authority to

> develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director. 20/

In many regards, OMB's draft circular on Federal information resources management is a broad, general policy statement implementing section 3504 of the Paperwork Reduction Act, consistent with other sections of that statute

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18/ U.S. Commission on Federal Paperwork. Information Resources Management. Washington, September 9, 1977, p. 12-13.

19/ 94 Stat. 2812, 2815-1818; 44 U.S.C. 3504.

20/ Federal Register, v. 50, March 15, 1985, p. 10734, 10738.

and other authorities cited in the draft circular. 21/ By explicit citation, it also acknowledges the pertinence of the Freedom of Information Act, 22/ the National Science and Technology Policy, Organization and Priorities Act, 23/ the Federal Records Act, 24/ and National Security Decision Directive 145 concerning "National Policy on Telecommunications and Automated Information Systems Security." 25/

The policies expressed in the draft circular "apply to the information activities of all agencies of the executive branch of the Federal Government," 26/ excluding independent regulatory agencies and the Executive Office of the President with the exception of OMB and the Office of Administration. 27/ OMB's introduction to the draft circular indicates that the policies it expresses derive from "statutes or legislative history, or represent executive branch management philosophy." 28/ Due to the broad scope and general nature of the draft circular, as well as the manner in which it was formulated, at

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21/ Ibid., p. 10738; these authorities include the Privacy Act (5 U.S.C. 552a), the Federal Property and Administrative Services Act (40 U.S.C. 759), the Budget and Accounting Act (31 U.S.C. 11), and E.O. 12046 (3 C.F.R. 1978 Comp., p. 158).

22/ 5 U.S.C. 552.

23/ 42 U.S.C. 6601 et seq.

24/ 64 Stat. 583 as amended by 90 Stat. 2723.

25/ Issued September 17, 1984 with an unclassified version, but not published.

26/ Federal Register, v. 50, March 15, 1985, p. 10738.

27/ See Ibid., p. 10739.

28/ Ibid., p. 10734.

least one commentor recently took issue with it saying the proposal "reaches beyond agency management considerations into areas which are properly the purview of Congress." 29/

Four areas of general management policy are addressed in the draft circular: (1) information collection and generation, (2) information sharing, (3) economy and cost considerations, and (4) information dissemination, distribution, and publication. The treatment of these areas by the circular is discussed below. As defined in the draft circular, information "means any communication or reception of knowledge such as facts, data, or opinions, including numerical, graphic, or narrative forms, whether oral or maintained in any medium, including computerized data bases, paper, microform, or magnetic tape." 30/ It is apparent that "information" is understood here in very broad terms.

Information Collection and Generation

Historically, when the Federal Government was organized in 1789, the new departments, possessing no information of their own, began collecting it from a variety of sources—predecessor agencies, commerical enterprises, and the citizenry being among the initial contributors. Today, government information still derives from this basic collection activity, though its original scope and magnitude have increased in many ways over the past two centuries. And, as the draft OMB circular acknowledges [section 7b], a valuable resource has resulted.

29/ Letter of May 14, 1985, from Eileen D. Cooke, Director, American Library Association, Washington Office, to J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, commenting on the draft OMB circular.

30/ Federal Register, v. 50, March 15, 1985, p. 10739.

> Government information is a valuable resource. It is an essential tool for managing the government's operations, provides citizens with knowledge of their society, and is a commodity with economic value in the marketplace. 31/

Within this expansive view of government information as an "essential tool for managing the government's operations," Congressional oversight of agency administration would arguably play a major role. But the draft OMB circular dispells such a notion in the very next paragraph [section 7c] by defining the "value of government information to the government [as] solely a function of the degree to which information contributes to achieving agencies' missions." 32/

The second paragraph appears to be somewhat limited in scope. For example, it makes no mention of the value and importance of government information to Congressional overseers and the citizenry of a democracy. Assuming its accuracy and reliability, government information can contribute significantly to government accountability. The paragraph also might have given some recognition to the many ways in which government information is used by various government entities in the United States, businesses, financial institutions, social scientists, and other scholars, academics, and researchers. Finally, the second paragraph implies that, unless government information contributes to an agency's missions, the agency should not collect or possess it. In one sense, this may be efficient or economical management of information, but in another sense, it might be shortsighted if "missions" are ill-defined or subject to changes over which an agency has little control. Further attention will be given to efficiency and economy considerations in the discussion of costs.

31/ Ibid.

32/ Ibid.

Among its other basic considerations and assumptions, the draft circular offers the following provision [section 7i] bearing on information collection:

> The value of perserving government records is a function of the degree to which preservation protects the legal and financial rights of the government or its citizens, and provides an official record of Federal agency activities for agency management and historical purposes. 33/

A problem arising with this paragraph concerns its reference to "government records" rather than "government information." The term "government records" is not defined in the circular and is otherwise of uncertain significance in the case of electronically stored data. "Government information" is defined in the circular [section 6c] and does address the electronic medium. The paragraph indicates that "an official record of Federal agency activities for agency management and historical purposes" is to be maintained. Apart from accountability considerations, the preservation of agency information can reduce or eliminate the need to collect such material, perhaps for comparative or trend purposes, in the future. However, this objective might be better met by properly defining "government records" or substituting "government information" in the paragraph.

In specifying information management policies [section 8a], the draft circular includes three provisions concerning collection. The first of these [section 8a(1)] states:

> Create or collect only that information necessary to achieve agency mission objectives and only after planning for its processing, transmission, dissemination, use, storage, and disposition. 34/

33/ Ibid.

34/ Ibid.

This is a basic statement of information resources management. It requires agencies to plan the full life-cycle of information it anticipates generating, including meeting a standard of need ("to achieve agency mission objectives") and providing a final status ("disposition"). A provision in the basic considerations and assumptions section of the draft circular, discussed earlier, contained a similar approach to information collection. 35/ By adhering to this subsection, will agencies narrowly interpret their mission objectives and generate information for their own immediate needs, or will they broadly interpret their mission objectives and produce information for both themselves and the community of interests they individually serve? A Federal agency probably is able to collect information that no interest group could gather by itself. And perhaps information produced by a Federal agency is regarded as being more reliable and valid than that generated by an interest group. It may be that better administration and regulation result (for society) from this situation than would if competing interest groups were left to their own devices for information gathering.

The second policies provision concerning collection [section 8a(2)] states:

> Seek to satisfy new information needs through interagency or intergovernmental sharing of information or through commerical sources before creating or collecting new information. 36/

Several considerations arise regarding this provision. Although it is not clearly stated in OMB's draft circular, there appears to be an underlying presumption that, in satisfying new information needs, interagency or intergovernmental sharing or commerical sources will be more efficient and

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35/ See text accompanying note 32 supra.

36/ Federal Register, v. 50, March 15, 1985, p. 10739.

economical than generation by an agency itself. There is also a presumption that information sought through interagency, intergovernmental, or commercial avenues will be in a reasonably useful form, methodologically valid and reliable, and suitable in scope.

With regard to the propriety of interagency or intergovernmental information sharing, provision is made elsewhere in the draft circular for the protection of individually identifiable and proprietary information [section 8a(4)], but no mention is otherwise made of ethical or legal restraints pertaining to the use of information by a Federal agency for a given purpose even though it was collected by another government entity for a different purpose. And in the case of the Privacy Act, some special limitations apply. According to the statute, when seeking personal information, agencies shall "collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs." 37/ This Privacy Act provision affects agency use of commercial sources to obtain personal information. Indeed, such use of commercial information sources of late has been especially controversial--e.g. Internal Revenue Service use of mailing lists for lifestyle indicators--or has required specific authorizing legislation such as the Debt Collection Act of 1982. 38/

The third policies provision concerning collection [section 8a(3)] states:

> Limit the collection of individually identifiable information and proprietary information to that which is legally authorized and necessary to achieve agency mission objectives. 39/

37/ 5 U.S.C. 552a(e)(2).

38/ See 96 Stat. 1749.

39/ Federal Register, v. 50, March 15, 1985, p. 10739.

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This language is unnecessarily somewhat different from, but does not appear to conflict with, collection and maintenance limitations specified in the Privacy Act as follows:

> Each agency that maintains a system of records shall—
>
> (1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;
>
> (2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs . . . 40/

The draft circular provision again raises the standard-of-need question discussed earlier, 41/ but because both individually identifiable and proprietary information enjoy privilege and protection under the law, an expansive interpretation of agency mission objectives would not result in information useful for both the collecting agency and the community of interests it serves. However, in the case of proprietary information alone, the provision may prompt agencies, in certain situations, to seek legislation clearly mandating the collection of specific kinds of business and commercial material.

Information Sharing

For reasons of efficiency and economy in information resources management, the draft OMB circular encourages interagency and intergovernmental information sharing. Because there do not appear to be any current studies of either type of information sharing by Federal agencies, it is difficult to know much about actual conditions and practice in these areas. However, there are a variety of

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40/ 5 U.S.C. 552a(e)(1) and (2).

41/ See text accompanying notes 32 and 35 supra.

obstacles—constitutional, statutory, regulatory, customary, ethical, and political—to such activity by executive branch entities. 42/ Federal statutes, for example, contain at least 200 provisions establishing confidentiality for different classes and kinds of information. 43/

The draft OMB circular on Federal information resources management contains three provisions pertaining to information sharing. Two of these are among the basic considerations and assumptions [section 7] of the circular, the first of which [section 7h] states:

> The open and efficient exchange of government scientific and technical information, subject to applicable national security controls and proprietary rights others may have in such information, fosters excellence in scientific research and the effective use of Federal research and development funds. 44/

This provision makes the point that not only Federal agencies, but also their contractors and grantees may facilitate information sharing. Further, Federal agencies have largely supported the axiom that scientific achievement and advancement depend upon openness, the sharing of research findings, and building upon scientific knowledge from the past. Again, the provision under discussion here supports this view. However, it also warns that national security controls and proprietary rights may limit such sharing. During the past few years, there has been considerable controversy over national security

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42/ See Richard C. Ehlke, and Harold C. Relyea. Policy Barriers to Information Sharing: An Introduction. In U.S. Congress. House. Committee on Energy and Commerce. Future Opportunities and Problems That Face The Nation. Committee print, 98th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1983, p. 24-37.

43/ U.S. Commission on Federal Paperwork. Confidentiality and Privacy. Washington, July 29, 1977, p. 26 note 38.

44/ Federal Register, v. 50, March 15, 1985, p. 10739.

controls on scientific communication. 45/ In brief, this dispute concerns the types of scientific and technical information that should be subject to such regulation, the kinds of national security controls that should be applied, and the propriety of such restrictions. Issues regarding proprietary rights in scientific research are less developed but, nevertheless, evolving. 46/ Two topics of debate appear to be the extent to which Federal R & D contractors and grantees may claim proprietary rights over their research and their unwillingness to report fully findings potentially having commercial value.

A second provision [section 7j] among the basic considerations and assumptions of the draft circular states:

> Federal Government information policies and activities can affect, and be affected by, the information policies and activities of other nations.

While the purpose of this statement is not immediately clear, it may serve as a generalized explanation for the necessity of imposing controls or restrictions on certain kinds of information sharing for reasons of military security, foreign policy, or economic warfare. The provision also may constitute a rationalization for Department of State-OMB liaison on international information policy issues [section 9b], Department of State-Commerce-OMB liaison on international communications issues [section 9c(5)], or security of Federal automated information systems matters [Appendix III] described elsewhere in the draft circular and discussed later in this analysis.

45/ See National Academy of Sciences. Scientific Communication and National Security, Washington, National Academy Press, 1982; Harold C. Relyea. Increased National Security Controls on Scientific Communication. Government Information Quarterly, v. 1, No. 2, 1984, p. 177-207; U.S. Congress. House. Committee on Science and Technology. Scientific Communications and National Security. Hearing, 98th Cong., 2d Sess. Washington, U.S. Govt. Print. Off., 1984.

46/ See Nelkin, Dorothy. Science As Intellectual Property. New York, Macmillan Publishing Company, 1984.

A third provision [section 8a(2)] pertaining to information sharing is found among the information management policies of the draft circular. It was addressed in the earlier discussion of information collection. 47/

Economy and Cost Considerations

With regard to costs and economy in information resources management, the draft OMB circular contains two central provisions on these matters as well as some related points in the area of information dissemination, all of which will be discussed here.

A provision [section 7d] among the basic considerations and assumptions of the circular states:

> The public and private benefits derived from government information must exceed the public and private costs of the information. 48/

While the costs of government information appear to be relatively easy to determine and calculate, the benefits are much more difficult to identify and quantify. Compliance with this provision will likely require the development of a uniform methodology for the agencies to establish information costs and benefits, explicit procedural requirements to ensure that all benefits are identified and fairly priced, and an opportunity for public comment on the resulting design.

A second provision [section 8a(2)] pertinent to considerations of economy is found among the information management policies of the draft circular. It was addressed in the earlier discussion of information collection. 49/

47/ See text accompanying note 36 supra.

48/ Federal Register, v. 50, March 15, 1985, p. 10739.

49/ See text accompanying note 36 supra.

Two other provisions in the policies section, both of which are concerned with information dissemination, have economy implications. The first of these [section 8a(b)] directs agencies to:

> Disseminate government information products and services only where . . . (d)issemination is essential to the agency's accomplishing its mission, and the products or services do not duplicate similar products or services that are already provided by other government or private sector organizations, or that reasonably could be expected to be provided by them in the absence of agency dissemination. 50/

Aspects of this provision other than economy considerations will be subsequently addressed in the next section of this analysis concerning information dissemination. In a recent letter to OMB commenting on the proposed circular, Rep. Glenn English, chairman of the House Subcommittee on Government Information, offered the following views regarding this particular requirement:

> A private sector information product or service may not, by its mere existence, fulfill the mission of an agency. Suppose a private sector information service duplicates an agency service but at a price that is much higher than the agedcy charges. Will a private sector service fulfill the agency's mission if few of the agency's clients can afford to use it? Suppose the private service is only available to those with the capability to use computer terminals? In evaluating a potentially duplicative private sector service, should an agency consider the price of the service and the ability of some users to access it? The circular offers no guidance on this point.
>
> Suppose a private company is willing to provide the part of an information service that has a sufficient market to generate profits. Should an agency only offer the unprofitable (but still essential) service? If the costs of providing partial service are the same as the costs of a more complete service, should an agency still defer to the private sector for the profitable services? As the market for information developes, should an agency change its service to accommodate the changing services offered by private companies? 51/

50/ Federal Register, v. 50, March 15, 1985, p. 10739.

51/ Letter of May 15, 1985, from Glenn English, Chairman, Government Information, Justice, and Agriculture Subcommittee, House of Representatives, to Douglas H. Ginsburg, Administrator for Information and Regulatory Affairs, Office of Management and Budget, commenting on the draft OMB circular.

Similar questions, unanswered by the circular, arise with another provision [section 8a(9)(b)] which states:

> Agencies shall . . . (d)isseminate government information products and services, when the [previously specified] conditions are met . . . (i)n the manner most cost effective for the government, including placing maximum feasible reliance on the private sector for the dissemination of the products or services. 52/

In "placing maximum feasible reliance on the private sector for the dissemination" of information products or services, are agencies expected to yield, without any conditions, the profitmaking capacity attending dissemination? By what standards or procedures shall such "reliance on the private sector" be realized? And how shall the "most cost effective" dissemination arrangement be determined—merely in terms of the one that is least expensive for the government? Or will the adequacy of the dissemination arrangement and the cost to consumers for the disseminated product or service also be considered? The draft circular is silent on these matters.

Dissemination, Distribution, and Publication

Government information is disseminated largely through conventional publication procedures or electronic transmission. Dissemination is the way agencies distribute government information. By contrast, access, which will be subsequently discussed in the next section, pertains to the way persons obtain information of their own volition. Both terms are defined in the following way in the draft OMB circular [sections 6f-g]:

> The term "access to information" refers to the function of providing to members of the public, upon their request, the government information to which they are entitled under law.

52/ Federal Register, v. 50, March 15, 1985, p. 10739-10740.

> The term "dissemination of information" refers to the function of distributing government information to the public whether through printed documents, or electronic or other media. "Dissemination of information" does not include intra-agency use of information, or responding to requests for "access to information." 53/

Dissemination is not directly addressed in the draft circular's basic considerations and assumptions [section 7]. Two provisions among the information management policies [section 8] of the proposal, however, have immediate pertinence. The first of these [section 8a(8)] directs agencies to—

> Disseminate government information products and services only where:
> (a) Dissemination is either required by law, or
> (b) Dissemination is essential to the agency's accomplishing its mission, and the products or services do not duplicate similar products or services that are already provided by other government or private sector organizations, or that reasonably could be expected to be provided by them in the absence of agency disseminaton. 54/

Certain problems arising from only the latter subsection of this provision were discussed earlier. 55/ Some additional considerations about the provision will be offered here. Although all agencies distribute various kinds of literature and documents to the public, many Federal entities have only vague or very general statutory authority for this activity. The mandate of the Department of Agriculture, for example, indicates it shall "diffuse among the people of the United States useful information on subjects connected with agriculture, rural development, aquaculture, and human nutrition, in the most general and comprehensive sense of those terms." 56/ Are both the information

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53/ Ibid., p. 10739.

54/ Ibid.

55/ See text accompanying note 50 supra.

56/ 7 U.S.C. 2201.

products and services of the Department of Agriculture disseminated in accordance with this provision "required by law," as the draft OMB circular directs? Stated differently, how generously may the "required by law" standard of the OMB proposal be interpreted? Will this standard cause agencies to feel compelled to seek new authority to justify their information activities? Who will determine that the standard of the circular has been met, the agency or OMB?

Additional difficulties are encountered in the second subsection of the provision. How is the term "essential" to be understood? Who shall determine "essential" dissemination of information, the agency or OMB? Similar problems of interpretation arise regarding the term "reasonably" in the final phrase of the subsection. Also, there appears to be a general prohibition on agency competition with private sector organizations in the dissemination of information products and services when an arguably more realistic limitation might be "unfair" competition in these matters. In the information age of post-industrial society, it appears very likely that the government will be a presence in the information market, which the draft OMB circular recognizes, but the issue to be addressed is one of unfair competition, not the elimination of competition totally.

Finally, the language of the latter subsection appears to raise a few particularly troublesome operations questions for Federal information managers. How long must an agency forego a dissemination program essential to its mission when a private organization capable of producing it has refrained from doing so but declines to indicate if it will do so anytime soon? Similarly, if a private information service, due to a poor market, abandons a dissemination program which an agency regards as essential to its mission, how long must the agency wait before assuming the program in lieu of another private organization? And, in terms of this example, must the agency forego the program in the event another private provider subsequently enters the market? As these questions suggest, Federal information managers could experience considerable frustration and consternation in their dissemination efforts due to the draft circular's lack of guidance in this area.

A second provision [section 8a(9)] among the information management policies expressed in the circular directs agencies to--

> Disseminate government information products and services, when the [previously specified] conditions are met:
>
> (a) In a manner that reasonably ensures the information will reach the members of the public the agency is responsible for reaching;
>
> (b) In the manner most cost effective for the government, including placing maximum feasible reliance on the private sector for the dissemination of the products or services;
>
> (c) So as to recover costs of disseminating the products or services through user charges, where appropriate, in accordance with OMB Circular A-25; and
>
> (d) Only after establishing procedures for periodically reviewing the continued need for and manner of dissemination of the products or services. 57/

As was true in other provisions of the circular discussed earlier, there are difficulties here concerning apparent standards expressed in this subsection. By whom and how will "the members of the public the agency is responsible for reaching" be determined? The term "cost effective" is not entirely clear, and it is uncertain as to whether or not cost effectiveness will necessarily be consistent with "maximum feasible reliance on the private sector." Finally, because it is an information dissemination condition, the periodic review procedures alluded to in the provision need to be stated in some detail. When developed, these procedures might be published in the Federal Register and public

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57/ Federal Register, v. 50, March 15, 1985, p. 10739-19740.

comment on them might be invited before they are finalized. Perhaps consideration might be given to prescribing some kind of input by "the members of the public the agency is responsible for reaching" during these periodic information dissemination reviews.

As a general information dissemination issue, the implications of the draft circular for the Federal Depository Library program cannot be overlooked. 58/ Published in the Federal Register of March 15, 1985, for public comment, the text of the draft circular does not appear to make any mention of Federal depository libraries. However, OMB supplemental information, in explaining the information dissemination sections of the proposed circular, states:

> Where possible, agencies should disseminate information products and services through existing programs, such as statutory authorized technical information clearinghouses and the Federal Depository Libraries, rather than creating new programs. (Note that "government publications," as defined at 44 U.S.C. 1902, must be made available through the Federal Depository Libraries.) 59/

The inclusion of such language in the text of the OMB proposal would serve to explain directly the role of Federal Depository libraries in the information resources management arrangements established by the draft circular. It would also serve to heighten awareness of an important relationship which some feel is endangered by the abstract cost efficiency or balance sheet considerations expressed in the circular. The elimination of government

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58/ The Federal Depository Library program traces its origins to a December 27, 1813 statute (3 Stat. 140) authorizing the distribution of government documents to certain libraries in the United States. For a time, the Secretary of the Interior was responsible (11 Stat. 253, 368, 379; 15 Stat. 292) for such distribution matters. The Printing Act of 1895 (28 Stat. 601) assigned these duties to the Superintendent of Documents at the Government Printing Office. The Federal Depository Library program was given a distinct and permanent mandate in 1913 (38 Stat. 75). Still directed by the Superintendent of Documents, the program is currently specified at 44 U.S.C. 1901-1916.

59/ Federal Register, v. 50, March 15, 1985, p. 10735.

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documents and publication programs will mean consequential losses of materials for depository libraries, which provide efficient and economical means for disseminating government information.

Further, the Federal Depository Library program will be significantly affected by information medium and technology considerations addressed by the draft OMB circular. As more and more information is maintained electronically in computerized data bases or magnetic tape, the Depository Library program seemingly will be undermined. Shifts from the paper medium to the electronic medium in information dissemination and storage may result in a net reduction in the flow of documents to depository libraries. In addition, the depository libraries have no assurance that they will receive magnetic tapes or similar self-contained vehicles of electronically stored information in the same manner that they now receive government publications. And they will be confronted with increased costs to equip themselves with new technology (or perhaps even to use existing technology, such as the telephone) to gain access to electronically maintained information. Given these prospects, it would appear that greater attention to the role of Federal Depository libraries in the information dissemination provisions of the draft OMB circular is merited.

ACCESS

As noted earlier, access pertains to the way persons obtain information of their own volition, and term "access to information" is defined in the draft OMB circular. 60/ The Freedom of Information Act established the presumptive

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60/ See text accompanying note 53 supra.

right of any person to obtain access to agency records, and prescribed a procedure for its realization. 61/ The Privacy Act did the same in a somewhat more circumscribed way regarding personally identifiable documents and files. 62/ While these are the principal laws pertaining to access as defined here, there are others which are pertinent to this issue area, such as the Government in the Sunshine Act 63/ and the Federal Depository Library statute. 64/

There appear to be two provisions among the basic considerations and assumptions [section 7] of the draft OMB circular that directly pertain to access. The first of these [section 7e] states:

> The use of up-to-date information technology offers opportunities to improve the management of government programs, and access to, and dissemination of, government information. 65/

The information technology aspects of the draft circular will be discussed in a subsequent section of this critique. Suffice it to say here that, while the above provision is accurate on its face, it is also quite true that information technology can pose a barrier to access. Information available only on a magnetic tape, for example, is not accessible to the public unless, having the tape in hand, one also has the proper machine to read it. Thus, the provision may be somewhat shortsighted.

The second access provision [section 7f] among the basic considerations and assumptions of the draft circular reads as follows:

61/ See 5 U.S.C. 552.

62/ See 5 U.S.C. 552a.

63/ 5 U.S.C. 552b.

64/ 44 U.S.C. 1901-1916.

65/ Federal Register, v. 50, March 15, 1985, p. 10739.

> The public's right to access to government information must be protected in the management of Federal agency records. 66/

This statement appears to be adequate to the extent that it is consistent with the Freedom of Information Act. It is less satisfactory, however, in some other regards. First, it is limited to "Federal agency records." This term, although undefined in the draft circular, seems to embrace only paper documents. Thus, the public's right to access to government information is circumscribed, seemingly being protected with regard to one type of information medium. The alternative term, "information," which is broadly defined in the circular, was obviously not used here, but the reasons for this situation are not clear.

Second, the statement appears to be shortsighted in that, by confining itself to "the management of Federal agency records," it ignores the implications of information collection. Had it been phrased in such a way as to use the term "information resources management" or to otherwise indicate that "management of Federal agency records" embraces information collection, then the difficulty foreseen here would not result. What is not collected cannot be accessed. The public's right to access to government information is affected by collection considerations, which clearly are part of information resources management. 67/

Among the information management policies [section 8] of the draft OMB circular, there appear to be three provisions pertinent to access considerations. The first of these [section 8a(4)(b)] is a limitation on access that states:

66/ Ibid.

67/ According to the draft OMB circular (section 6j), "'information resources management' means the planning, budgeting, organizing, directing, training, and control associated with government information. The term encompasses both information itself and the related resources, such as personnel, equipment, funds, and technology." Ibid.

> Agencies shall . . . (m)aintain and protect individually identifiable information and proprietary information in a manner that precludes . . . (v)iolation of obligations of confidentiality. 68/

Problematic here is the use of the word "obligations" which is sufficiently ambiguous that it could be regarded to be a reference to statutory requirements for the protection of certain kinds of information, or to ad hoc agency commitments to maintain confidentiality regarding certain kinds of information, or both. The Freedom of Information Act, of course, recognizes that certain kinds of information are to be protected and in that recognition, provides that existing statutes restrict access to some types of information. 69/ Beyond these considerations, agencies do not have any authority to restrict access to information not protectable under a statutory standard. Thus, as phrased, the above provision could be misleading.

Another provision [section 8a(5)] concerning access considerations reads as follows:

> Agencies shall . . . (p)rovide individuals with reasonable access to, and the ability to amend errors in, systems of records, consistent with the Privacy Act. 70/

The provision appears to be unnecessarily circumscribed in two ways. First, it refers to "reasonable" access, a qualifying term not used in the Privacy Act or in the comparable provision of the circular (section 8a(6)) pertaining to the Freedom of Information Act. Second, individuals can also use the F.O.I. Act to gain access to agency records about themselves, but the provision does not reflect this.

68/ Ibid.

69/ The nine exemptions of the Freedom of Information Act recognize types of information that can be excepted from the statute's rule of disclosure, the third exemption giving particular attention to other laws specifically protecting certain kinds of information. See 5 U.S.C. 552(b)(1)-(9).

70/ Federal Register, v. 50, March 15, 1985, p 10739.

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A third provision [section 8a(6)] bearing upon access directs agencies to:

> Provide public access to government information, consistent with the Freedom of Information Act. 71/

While this provision appears to be adequate on its face, it should not be interpreted to imply that public access to government information shall occur only through the formal procedures of the F.O.I. Act. In the absence of legal barriers, agencies should be willing to provide information to the public upon request without forcing the filing of an F.O.I.A. claim. And, as noted at the outset of this section, there are other laws besides the F.O.I. Act which pertain to public access to government information.

PRIVACY

The draft OMB circular consists of a principal text containing basic considerations, assumptions, policies and assignments of responsibilities to various agencies, along with appendices that provide guidelines to agencies for implementing the policies contained in the main text. Basic considerations and general policies with respect to the Privacy Act are set forth in these provisions of the circular. The first of these [section 7g] merely states that the "individual's right to privacy must be protected in Federal Government information activities involving personal information." The other two provisions [section 8a(4) and (5)] direct agencies to "(m)aintain and protect individually identifiable information and proprietary information in a manner that precludes: (a) Unwarranted intrusion upon person privacy . . . and (b) Violation of obligations of confidentiality," and to "(p)rovide individuals

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71/ Ibid.

with reasonable access to, and the ability to amend errors in, systems of records, consistent with the Privacy Act." 72/ The proprietary information component of the above policies goes beyond the scope of the Privacy Act, which is concerned exclusively with individually identifiable personal information. 73/ The protection of proprietary information has found expression in the so-called reverse Freedom of Information Act lawsuit as well as in numerous statutory and regulatory confidentiality provisions.

The draft circular also assigns to OMB [section 9h(10)] the responsibility to "(r)eview agencies' policies, practices, and programs pertaining to the security, protection, sharing, and disclosure of information, in order to ensure compliance with the Privacy Act and related statutes." 74/ The Privacy Act itself assigns oversight duties to OMB as well as the responsibility to develop guidelines and regulations for the use of agencies in implementing the Act. 75/ Pursuant to this authority, OMB has issued implementing guidelines on the Privacy Act as well as guidelines on computer matching and the Debt Collection Act as these impact on the Privacy Act. 76/ Oversight hearings were held in the House in 1983 on OMB's role in overseeing implementation of

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72/ Ibid.

73/ See 5 U.S.C. 552a.

74/ Federal Register, v. 50, March 15, 1985, p. 10741.

75/ P.L. 93-579, section 6; 88 Stat. 1909; 5 U.S.C. 552a note.

76/ See Federal Register, v. 40, July 9, 1975, p. 28948-28978; Ibid., v. 44, April 18, 1979, p. 23138-23144; Ibid., v. 47, May 19, 1982, p. 21656-21658; Ibid., v. 48, April 11, 1983, p. 15556-15560.

the Privacy Act and resulted in a committee report that was critical of aspects of the agency's Privacy Act activities or lack thereof. 77/

The main body of the draft OMB circular thus reiterates what is both explicit and implicit in the Privacy Act itself. Appendix I, on the other hand, imposes additional reporting requirements on Federal agencies regarding their implementation of and actions under the Act. 78/ The focus of the Appendix is procedural. Substantive interpretive guidance on the Privacy Act is contained in the guidelines that have been periodically issued by OMB, as discussed above.

Appendix I outlines the obligations of all Federal agencies, in addition to their primary responsibility to implement the Act, to conduct periodically certain reviews and be prepared to report to OMB. Every five years, agencies must review a random sample of contracts they have entered into for the operation of systems of records, pursuant to subsection (m) of the Act, to insure that each contract applies the provisions of the the Act to the contractor, as required by subsection (m). 79/ Agencies must review every three years: (1) the routine uses it currently employs with respect to its systems of records to insure that the uses continue to be compatible with the purpose for which the information was originally collected, 80/ and (2) the exemptions claimed for systems of records to determine their continued necessity. Annual

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77/ See U.S. Congress. House. Committee on Government Operations. Who Cares About Privacy? Oversight of the Privacy Act of 1974 by the Office of Management and Budget and by the Congress. H. Rept. 98-455, 98th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1983.

78/ Federal Register, v. 50, March 15, 1985, p. 10741-10743.

79/ 5 U.S.C. 552a(m).

80/ See 5 U.S.C. 552a(a)(7).

reviews must be made of agency recordkeeping and disposal policies and practices, ongoing computer matching programs, agency personnel training practices, and instances where the agency has been held civilly liable for violation of the Act or an employee has been found criminally liable under the Act. With respect to the latter, apparently only one criminal prosecution in the 1-year history of the Act has been reported. 81/ Findings of agency civil liability are also rare. 82/

Specific responsibilities regarding security of automated information systems, contracting practices, civilian personnel information maintenance, archival records, and the publication of agency rules, regulations, and systems of records are assigned respectively to the Department of Commerce, the General Services Administration, the Office of Personnel Management, and the National Archives and Records Administration. OMB is assigned oversight and reporting responsibility in accordance with the terms of the Privacy Act.

The Privacy Act requires agencies to publish in the Federal Register any new use or intended use of information in a system of records and to provide advance notice to Congress and OMB "of any proposal to establish or alter any system of records . . . " 83/ The circular outlines the format, content, supporting documentation and timing of such reports. 84/ It exempts from this reporting requirement so-called "minor changes to systems of records." The phrase is defined in the circular as:

81/ United States v. Gonzalez, Crim. No. 76-132 (M.D.La. Dec. 21, 1976) cited in U.S. Privacy Protection Study Commission. The Privacy Act of 1974: An Assessment. Washington, July 1977, p. 35 note 75.

82/ See U.S. Congress. House. Committee on Government Operations. Oversight of the Privacy Act of 1974. Hearings, 98th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 19783, p. 437-469.

83/ 5 U.S.C. 552a(e)(11), (o).

84/ Federal Register, v. 50, March 15, 1985, p. 10742-10743.

> a change that does not significantly change the system; that is, does not affect the character or purpose of the system and does not affect the ability of an individual to gain access to his or her record or to any information pertaining to him or her which is contained in the system; e.g., changing the title of the system manager. 85/

The concept of "minor changes to systems of records" does not appear in the Privacy Act.

Examples of non-minor system changes that would require a report are given in the circular and include: (1) an increase or change in the number of types of individuals on whom records are maintained, (2) an expansion of the types or categories of information maintained, (3) a change in the use of the information in the system, (4) a change that results in greater access to the records in the system, and (5) the addition of an exemption.

Thus, the draft circular, for Privacy Act purposes, contains primarily procedural guidance, prefaced by broad statements of the premises and goals of the Privacy Act. It does not contain substantive interpretive guidance on the Act of the type OMB has issued in the past. The effectuation of the circular ultimately depends primarily on the various Federal agencies on which new Privacy Act reporting responsibilities are imposed and on those agencies to which specific obligations are delegated. What OMB does with the information reported to it by Federal agencies will also shape its oversight role under the Privacy act.

85/ Ibid., p. 10742.

INFORMATION SYSTEMS AND TECHNOLOGY MANAGEMENT

Two provisions of the main text [sections 8(b) and 9], Appendix II, and Appendix III of the draft OMB circular deal with various aspects of information systems and technology management in the Federal Government. The circular implements the authority granted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act to develop and implement policies and guidelines for the automatic data processing (ADP) and telecommunications functions of the Federal Government. 86/

In addition, the draft circular revises OMB Circular A-71 [Responsibilities for the Administration and Management of Automatic Data Processing Activities], as well as the procedural aspects of Transmittal Memorandum No. 1 to Circular A-71 [Security of Federal Automated Information Systems], and OMB Circular A-121 [Cost Accounting, Cost Recovery, and Interagency Sharing of Data Processing Facilities]. OMB Circular A-90 [Cooperating with State and Local Governments to Coordinate and Improve Information Systems] would be rescinded and a general policy statement on the subject inserted in the draft circular.

Section 8(b) of the draft circular outlines policies for the planning, acquisition, operation, and management of Federal information systems and technology. The policies are based upon the basic assumption (section 7e) that "the use of up-to-date information technology offers opportunities to improve the management of government programs, and access to and dissemination of, government information." 87/ According to the background information provided by OMB, the Federal Government is the Nation's largest single ADP

86/ 44 U.S.C. 3504(g).

87/ Federal Register, v. 50, March 15, 1985, p. 10739.

user. In FY85, the Government plans to spend almost $14 billion on Federal information systems and technology. Further, that budget is projected to increase at a rate faster than that of the overall budget. 88/

Against this background of increasing Federal agency dependence on information technology, section 8(b) of the draft circular lays the groundwork for planning processes for agencies to follow when acquiring and using ADP and telecommunications technologies. The section covers a broad range of ADP management policies, such as management controls and accountability, software management, standards, system compatibility, and security. One theme throughout the section is reliance on the private sector whenever possible. For example, section 8(b)(7) and section 8(b)(8) state that Federal agencies should: "[a]ssure that existing and planned major information systems do not unnecessarily duplicate information systems available from other agencies or the private section;" and "[a]cquire off-the-shelf software from commercial sources, unless the cost effectiveness of developing custom software is clear and has been documented. 89/

In addition, section 8(b)(18) directs Federal agencies to "[s]eek opportunities to improve the operation of government programs or to realize savings by applying up-to-date information technology to government information activities." In the supplementary information provided, OMB acknowledges the efforts by several agencies to adopt electronic information collection and dissemination systems. They conclude that the policies that apply to information collection and dissemination in other media also apply to electronic systems, but that there is a need to consider issues such as privacy, public access, records management, and problems associated with creating contractor monopolies. 90/

88/ Ibid., p. 10736.

89/ Ibid., p. 10740.

90/ Ibid., p. 10737.

Given the fact that several agencies—such as the Securities and Exchange Commission, the Patent and Trademark Office, the Federal Maritime Commission, and the Department of Agriculture—have already initiated or are seriously considering the use of information technology for streamlining data collection, storage, and retrieval, OMB's treatment of the issue may be inadequate. Many of the policy issues associated with this trend remain unresolved. OMB states that generally the same policies should apply to information collected and disseminated electronically as to other media. However, Rep. Glenn English, in comments filed on the draft circular, states that information disseminated by electronic means "may present a range of information issues that are considerably different than the issues presented by hard-copy dissemination." 91/

While section 8(b) consolidates and addresses a broad range of policies for planning and operating information technology systems, OMB may not have supplied sufficient guidance in several areas. For example, OMB's guidance on system compatibility and interconnectivity may be inadequate in light of the rapid proliferation of various types of low-cost computer and telecommunications systems in the Federal agencies. OMB may need to devote more attention to this area to ensure that both present and future agency information systems can communicate and are compatible. Another example is in the area of standards. The draft circular states [section 8b(14)] that agencies should use the "Federal Information Processing and Telecommunications Standards except where it can be demonstrated that the costs of using a standard exceed the benefits or the standard will impede the agency accomplishing its mission." 92/ OMB may

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91/ Letter of May 15, 1985, from Glenn English, Chairman, Government Information, Justice, and Agriculture Subcommittee, House of Representatives, to Douglas H.Ginsburg, Administrator for Information and Regulatory Affairs, Office of Management and Budget, commenting on the draft OMB circular.

92/ Federal Register, v. 50, March 15, 1985, p. 10740.

wish to describe in greater detail situations in which standards should or should not be used to ensure that greater efficiencies and cost savings are achieved.

Section 8(b) reflects the significant impact of advances in information technology on government agency computing activities. The emergence of mini- and microcomputers, the development of more sophisticated telecommunications networks, and the growth of end-user computing all substantially affect the ways in which information technology may be employed to support government operations. The draft OMB circular acknowledges these changes in technology in several ways, including [section 8b(3)] making "the official whose program an information system supports responsible and accountable for the products of that system." 93/ The fact that program managers are not required to use specific information technology facilities or services unless it is cost-effective and meets the program needs [section 8(b)(15)] further emphasizes the opportunities available to program managers other than centralized computing facilities. The theme of reduced reliance on large, centralized systems is reiterated in the supplementary information where OMB endorses the approach of end-user computing and in section 9d where the General Services Administration is assigned responsibility to streamline procurement procedures so that program managers can acquire needed technology on a timely basis. 94/

On the other hand, the draft circular also extends the authority of OMB over the information technology activities of the agencies. For example, the term "information technology facility" is defined [section 6i] so broadly as

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93/ Ibid., p. 10740.

94/ Ibid., p. 10737-10738.

to include virtually any type of activity involving the use of technology for handling information. 95/ Additionally, the requirements for extensive documentation to justify establishment of and continuation of major information systems may complicate rather than expedite the acquisition process. 96/ The lack of a definition of "major" may also allow OMB to extend its control over the agencies.

Assignment of Responsibilities

Section 9 revises OMB Circular A-71 in the assignment of responsibilities for administering and managing ADP activities. These changes reflect both the passage of legislation and other technological developments. For example, in accordance with the Paperwork Reduction Act 97/, all Federal agencies are required [section 9a(9)] to designate a senior official for information resources management to carry out the responsibilities assigned under the Act.

Another change reflects the growing importance of international information policy and the increased government attention to emerging issues in this arena. The draft circular directs [section 9b(1)] the Secretary of State to advise the Director of OMB on "the development of United States positions and policies on international information policy affecting Federal Government information activities and ensure . . . [they] are consistent with Federal information policy." 98/ OMB makes a distinction between U.S. information policy that

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95/ Ibid., p. 10739.

96/ Ibid., p. 10740.

97/ 44 U.S.C. 3506.

98/ Federal Register, v. 50, March 15, 1985, p. 10740.

reflects U.S. interests internationally and Federal information policy. However, the draft circular also makes clear that OMB has a role to play in developing U.S. information policy when Federal information policy is related.

Revisions of OMB Circular A-121

OMB Circular A-121 requires only that the holder of excess ADP capacity share such capacity. Sections 8(b)(4)-(5) of the draft circular, however, require both that the holder share capacity and that the agency seeking information processing capacity fulfill its needs from other agencies or the private sector, wherever possible, before acquiring new capacity itself. 99/

On the issue of assigning costs to users, the circular also makes a significant change. OMB Circular A-121 requires that costs for ADP facilities be "allocated" to users. Section 8(b)(16) of the draft circular requires, however, that agencies must now "recover" the costs of information technology from government users. In the supplementary information, OMB suggests that allocating costs had little effect on agencies' behavior. Recovering costs will require that actual transfers of funds take place between suppliers and users of information technology facilities. Appendix II of the draft circular provides procedures for implementing the cost recovery policy.

Efforts to recover costs for information technology facilities and the information products made available through those facilities have raised concerns about the ability of the public to access government information. For example, the American Library Association in its comments on the OMB draft circular raised a number of questions about what impact these charges might have on

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99/ Ibid.

the availability of information services that are not profitable. They cite the fact that the Federal Government is often the user, as well as the producer, of information and, therefore, there are often no data available to accurately determine usage of information services. 100/ Reductions in budgets based upon expected cost recovery may further impact the ability of agencies to provide various information services.

Recission of OMB Circular A-90

The draft circular rescinds OMB Circular A-90 [Cooperating with State and Local Governments to Coordinate and Improve Information Systems]. OMB, however, reaffirms Transmittal Memorandum No. 1 to Circular A-90 in section 8(b)(17) of the draft circular by prohibiting Federal agencies from placing unnecessary restrictions on the information systems that State and local governments use to carry out Federally financed program activities. 101/

Security of Information Systems

The OMB draft circular emphasizes the importance of maintaining systems security, both to protect the information contained in Federal systems and to ensure that these systems operate as intended. There is a recognition that the rapid growth of small computers and the expanding number of users greatly increases the vulnerability of Federal information systems. In the supplementary information, OMB maintains that "security of information systems

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100/ Letter of May 14, 1985, from Eileen D. Cooke, Director, American Library Association, Washington Office, to J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, commenting on the draft OMB circular.

101/ Federal Register, v. 50, March 15, 1985, p. 10740.

is first and foremost a management issue and only secondly a technical problem of computer security." 102/ In response to this, Appendix III provides for the establishment of a security awareness and training program for agency and contractor personnel who are involved with information technology. 103/

The draft circular revises Transmittal Memorandum No. 1 to OMB Circular A-71 in section 8(b)(10)-(13) and provides procedural guidance for implementing systems security in Appendix III. OMB also clarifies the relationship between security of automated Federal information systems and internal agency control reports (OMB Circular A-123) in the Appendix.

The draft circular and Appendix III comply with National Security Decision Directive 145, National Policy on Telecommunications and Automated Information Systems Security, signed by President Reagan on September 17, 1984. The Appendix recognizes the role of the Secretary of Defense as "executive agent of the government for the security of automated information systems that process information, the loss of which could adversely affect the national security interest." 104/ In addition, the role of the Defense Department in providing technical assistance, particularly for encryption devices for telecommunications security, also is enunciated. While the expertise of the Department of Defense in these matters is recognized, there has been some concern voiced over the expanding role of the defense and intelligence communities in protecting information in other parts of the government.

102/ Ibid., p. 10737.

103/ Ibid., p. 10746.

104/ Ibid., p. 10746.

HCR;JB;RCE;NRM/rla

APPENDIX 8.—AGENCY SUBMISSIONS TO CHAIRMAN GLENN ENGLISH, GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE SUBCOMMITTEE, REGARDING OTHER ELECTRONIC INFORMATION SYSTEMS

A. Letter From Sue Mathis, Director, Office of Media Relations, The White House, Dated June 26, 1985

THE WHITE HOUSE
WASHINGTON

June 26, 1985

Dear Congressman English:

I am responding to your inquiry to Larry Speakes about the White House News Service.

Perhaps the News Service is best described as an information service: an electronic bulletin board whereby media outside of Washington have immediate access to materials provided to the White House press corps. These materials have previously been made available to out-of-town press by mail, a timely and costly procedure. The News Service now provides these releases to out-of-town press without the delay normally associated with traditional mailings. Similarly, federal and state agencies, congressional offices, law firms, and corporations with interests in Washington may also have access to this material if they so desire.

For your information, I am enclosing the following items: ITT Dialcom price schedules, for both government and private companies; a copy of the contract between ITT Dialcom and the Executive Office of the President for Dialcom services; EPUB Systems Manual, which describes how electronic publishing works; and the GSA automated data and telecommunications service authorized teleprocessing services program scheduled price list -- I have attached paper clips on the appropriate pages for the White House.

In the first three months of operation, White House News was accessed almost 5,000 times. The last figure we received was 4,987 -- for a two month period. If you need further assistance, please don't hesitate to call me at 456-2755.

Sincerely,

Sue Mathis

Sue Mathis
Director
Office of Media Relations

The Honorable Glenn English
Chairman
Government Information, Justice, and Agriculture
Subcommittee of the
Committee on Government Operations
B-349-C Rayburn House Office Building
Washington, D.C. 20515

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22. UNITED STATES OF AMERICA BY (Signature) ▶ Nancy C. Roth

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TITLE: CONTRACTING/ORDERING OFFICER

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5. ACCOUNTING AND APPROPRIATION DATA 1130038 Div: 107 OC: 72

6. SHIP TO (Consignee and Address, ZIP Code) Executive Office of the President
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*See reverse for rejections

Item No. (a)	Supplies or Services (b)	Quantity Ordered (c)	Unit (d)	Unit Price (e)	Amount (f)	Quantity Accepted* (g)
01	Teleprocessing Services in support of the "Automated Office System" Project. Training and Installation shall begin at a mutually agreed to time. The period of performance for services under this contract shall be from the date of the order through September 30, 1983. The Government plans to exercise an option against the FY83 TSP contract for services in FY84 estimated at $250,000.00. Funding for this option will be confirmed at a later date.		NOT TO EXCEED		$1,000.00	

16. CLASSIFICATION ☒ SMALL BUSINESS ☐ OTHER THAN SMALL BUSINESS ☐ MINORITY BUSINESS ENTERPRISE

SEE BILLING INSTRUCTIONS ON REVERSE

17. SHIPPING POINT

18. GROSS SHIPPING WEIGHT

19. INVOICE NO.

15. (h) Total from continuation pages ◀

20. MAIL INVOICE TO (Include ZIP Code) Executive Office of the President, OA,AID, 726 Jackson Pl., N.W., Washington, DC 20503 ATTN: J. COSKY

NOT TO EXCEED $1,000.00 ◀ 16. (i) GRAND TOTAL

21. UNITED STATES OF AMERICA BY (Signature) Russell Peyton

22. NAME (Typed) RUSSELL T. PEYTON

TITLE: CONTRACTING/ORDERING OFFICER

ORDER FOR SUPPLIES OR SERVICES 147-108

STANDARD FORM 147 (REV. 3-77)
Prescribed by GSA, FPR (41 CFR) 1-3.605

BEST COPY AVAILABLE

Vendor Copy

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

PAGE 1 OF 2

1. 01
2. 10/1/83
3. REZ-1649
4.

5. CODE

Executive Office of the President
Office of Administration, Procurement
and Contracts, Room 424, OEOB
Washington, D.C. 20500

6. CODE

7. CODE ☐ FACILITY CODE ☐

ITT Dialcom, Incorporated
600 Maryland Avenue, S.W.
Suite 455
Washington, D.C. 20024

8. ☐ ____
☒ OA3447
9/23/83

9. ☐ ☐ ☐

10. 1140038 Div: 107 (ASD) CC: 72 Increase - $5,000.00

11. (a) ☒ the original order and paragraph D.11.b. of the MASC.
(b) ☐
(c) ☐

12.

1. The following paragraphs further define the order in accordance with General Services Administration's Teleprocessing Services Program (TSP) Handbook:

   a. Authority to place the TSP Schedule order was granted by GSA under the provisions of Temporary Regulation 64.

   b. This is a systems life order issued in accordance with paragraph D.11.b. of the GSA Schedule GS00K8302D1008 and is subject to renewal on a fiscal year basis. In accordance with Solicitation 83-ASD/08, the systems life order has options to renew for fiscal years 1984 and 1985.

   c. Pursuant to the terms of the GSA Schedule, payment for services will be made by GSA, ADP Fund Branch. Upon rebilling by GSA, the designated agency paying office will reimburse GSA in the full amount billed.

2. The Government hereby exercises the option to extend the contract for fiscal year 1984 beginning October 1, 1983 and ending September 30, 1984.

13. ☒ ☐

14.

17. Nancy C. Roth

15.

16.

18. NANCY C. ROTH

19. 10/19/83

30-101

B. Letter From Janet L. Norwood, Commissioner for Bureau of Labor Statistics, U.S. Department of Labor, Dated June 26, 1985

U. S. Department of Labor

Commissioner for
Bureau of Labor Statistics
Washington, D.C. 20212

JUN 26 1985

Honorable Glenn English
Chairman, Subcommittee on Government
Information, Justice, and Agriculture
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding to your letter of June 7, requesting information about the Bureau of Labor Statistics program of making its news releases available electronically.

As the government's principal fact-finder in the field of labor economics, the Bureau produces and disseminates a number of key economic indicators, including the Consumer Price Index, the Producer Price Index, and the Employment Situation. These indicators are widely used by government, industry, and labor to adjust payments, escalate contracts, and to make economic policy decisions.

BLS makes this information available to the press and other users in the form of news releases. (A full list of regular BLS releases and scheduled release dates is enclosed.) Members of the working press pick up the news releases immediately upon release at the Department of Labor information office. Other users receive the releases later, by mail or through BLS periodicals.

In November 1982, we established the BLS Electronic News Release Service to make it possible for all users to gain immediate online access to major BLS releases. BLS does not charge users for the data in these releases. Users pay only the cost of accessing releases they want from the computers in which the releases are stored. Because BLS does not operate its own mainframe computers, users of the BLS Electronic News Release Service access the releases through a computer service center with which BLS has a time-sharing arrangement. Users contract with this center, operated by Electronic Data Systems, for the right to access BLS releases online, paying only for the actual computer time used, at the average rate of $15 per hour. There is no standard or minimum

Honorable Glenn English--2
JUN 26 1985

fee. The cost per release depends on the length of a release, speed of transmission, and type of equipment used. Typical access costs range from $6 to $30 per release. A user who occasionally wants to access only a portion of a release may incur lower costs. BLS maintains full control of the content of the releases and of their release schedule.

Currently, 13 banks, research firms, information vendors, other firms and labor unions use the BLS News Release Service regularly. More than 200 other business, news, and information organizations have asked for information about the service.

If you have further questions about the BLS News Release Service, please contact me or Henry Lowenstern, Associate Commissioner, Office of Publications.

Sincerely yours,

Janet L. Norwood

JANET L. NORWOOD
Commissioner

Enclosure

U.S. Department of Labor

Bureau of Labor Statistics
441 G Street, N.W.
Washington, D.C. 20212

February 1985

BLS NEWS RELEASE SCHEDULE FOR 1985 (Tentative)

The Employment Situation	January 9	8:30 A.M.
Producer Price Indexes	January 11	8:30 A.M.
State and Metropolitan Area Employment and Unemployment	January 15	Immediate
Consumer Price Index	January 23	8:30 A.M.
Retail Food Price Index, Washington, D.C., Area	January 23	8:30 A.M.
Consumer Prices: Energy and Food	January 23	2:00 P.M.
Real Earnings	January 23	2:00 P.M.
Major Collective Bargaining Agreements	January 24	10:00 A.M.
Earnings of Workers and Their Families	January 28	10:00 A.M.
Productivity and Costs	January 29	10:00 A.M.
Employment Cost Index	January 29	10:00 A.M.
U.S. Import and Export Price Indexes	January 31	10:00 A.M.
The Employment Situation	February 1	8:30 A.M.
State and Metropolitan Area Employment and Unemployment	February 12	Immediate
Producer Price Indexes	February 15	8:30 A.M.
Consumer Price Index	February 26	8:30 A.M.
Consumer Price Index, Washington, D.C., Area	February 26	8:30 A.M.
Consumer Prices: Energy and Food	February 26	2:00 P.M.
Real Earnings	February 26	2:00 P.M.
Productivity and Costs	February 28	10:00 A.M.
The Employment Situation	March 8	8:30 A.M.
Producer Price Indexes	March 15	8:30 A.M.
State and Metropolitan Area Employment and Unemployment	March 19	Immediate
Consumer Price Index	March 22	8:30 A.M.
Retail Food Price Index, Washington, D.C., Area	March 22	8:30 A.M.
Consumer Prices: Energy and Food	March 22	2:00 P.M.
Real Earnings	March 22	2:00 P.M.

The Employment Situation	April 5	8:30 A.M.
Producer Price Indexes	April 12	8:30 A.M.
State and Metropolitan Area Employment and Unemployment	April 16	Immediate
Consumer Price Index	April 23	8:30 A.M.
Consumer Price Index, Washington, D.C., Area	April 23	8:30 A.M.
Consumer Prices: Energy and Food	April 23	2:00 P.M.
Real Earnings	April 23	2:00 P.M.
Productivity and Costs	April 25	10:00 A.M.
Major Collective Bargaining Agreements	April 26	10:00 A.M.
Employment Cost Index	April 30	10:00 A.M.
U.S. Export and Import Price Indexes	Not yet scheduled	
New releases on earnings of workers and of families	Not yet scheduled	
The Employment Situation	May 3	8:30 A.M.
Producer Price Indexes	May 10	8:30 A.M.
State and Metropolitan Area Employment and Unemployment	May 14	Immediate
Consumer Price Index	May 21	8:30 A.M.
Retail Food Price Index, Washington, D.C., Area	May 21	8:30 A.M.
Consumer Prices: Energy and Food	May 21	2:00 P.M.
Real Earnings	May 21	2:00 P.M.
Productivity and Costs	May 29	10:00 A.M.
The Employment Stituation	June 7	8:30 A.M.
Producer Price Indexes	June 14	8:30 A.M.
State and Metropolitan Area Employment and Unemployment	June 18	Immediate
Consumer Price Index	June 20	8:30 A.M.
Consumer Price Index, Washington, D.C., Area	June 20	8:30 A.M.
Consumer Prices: Energy and Food	June 20	2:00 P.M.
Real Earnings	June 20	2:00 P.M.
The Employment Situation	July 5	8:30 A.M.
Producer Price Indexes	July 12	8:30 A.M.
State and Metropolitan Area Employment and Unemployment	July 16	Immediate
Consumer Price Index	July 23	8:30 A.M.
Retail Food Price Index, Washington, D.C., Area	July 23	8:30 A.M.
Consumer Prices: Energy and Food	July 23	2:00 P.M
Real Earnings	July 23	2:00 P.M.

Productivity and Costs	July 25	10:00 A.M.
Major Collective Bargaining Settlements	July 25	10:00 A.M.
Employment Cost Index	July 30	10:00 A.M.
U.S. Export and Import Price Indexes	Not yet scheduled	
New releases on earnings of workers and of families	Not yet scheduled	
The Employment Situation	August 2	8:30 A.M.
Producer Price Indexes	August 9	8:30 A.M.
State and Metropolitan Area Employment and Unemployment	August 13	Immediate
Consumer Price Index	August 22	8:30 A.M.
Consumer Price Index, Washington, D.C., Area	August 22	8:30 A.M.
Consumer Prices: Energy and Food	August 22	2:00 P.M.
Real Earnings	August 22	2:00 P.M.
Productivity and Costs	August 27	10:00 A.M.
The Employment Situation	September 6	8:30 A.M.
Producer Price Indexes	September 13	8:30 A.M.
State and Metropolitan Area Employment and Unemployment	September 17	Immediate
Consumer Price Index	September 24	8:30 A.M.
Retail Food Price Index, Washington, D.C., Area	September 24	8:30 A.M.
Consumer Prices: Energy and Food	September 24	2:00 P.M.
Real Earnings	September 24	2:00 P.M.
The Employment Situation	October 4	8:30 A.M.
Producer Price Indexes	October 11	8:30 A.M.
State and Metropolitan Area Employment and Unemployment	October 16	Immediate
Consumer Price Index	October 23	8:30 A.M.
Consumer Price Index, Washington, D.C., Area	October 23	8:30 A.M.
Consumer Prices: Energy and Food	October 23	8:30 A.M.
Real Earnings	October 23	2:00 P.M.
Productivity and Costs	October 28	10:00 A.M.
Major Collective Bargaining Settlements	October 28	10:00 A.M.
Employment Cost Index	October 29	10:00 A.M.
U.S. Export and Import Price Indexes	Not yet scheduled	
New releases on earnings of workers and of families	Not yet scheduled	

The Employment Situation	November 1	8:30 A.M.
State and Metropolitan Area Employment and Unemployment	November 13	Immediate
Producer Price Indexes	November 15	8:30 A.M.
Consumer Price Index	November 22	8:30 A.M.
Retail Food Price Index, Washington, D.C., Area	November 22	8:30 A.M.
Consumer Prices: Energy and Food	November 22	2:00 P.M.
Real Earnings	November 22	2:00 P.M.
Productivity and Costs	December 2	10:00 A.M.
The Employment Situaticn	December 6	8:30 A.M.
Producer Price Indexes	December 13	8:30 A.M.
State and Metropolitan Area Employment and Unemployment	December 17	Immediate
Consumer Price Index	December 20	8:30 A.M.
Consumer Price Index, Washington, D.C., Area	December 20	8:30 A.M.
Consumer Prices: Energy and Food	December 20	2:00 P.M.
Real Earnings	December 20	2:00 P.M.
The Employment Situation	January 8, 1986	
Producer Price Indexes	January 10, 1986	
State and Metropolitan Area Employment and Unemployment	January 14, 1986	
Consumer Price Index	January 21, 1986	
Cosumer Price Index, Washington, D.C., Area	January 21, 1986	
Consumer Prices: Energy and Food	January 21, 1986	
Real Earnings	January 21, 1986	

Other January 1986 releases are not yet scheduled

C. Letter From David P. Prosperi, Assistant to the Secretary and Director of Public Affairs, U.S. Department of the Interior, Dated July 15, 1985

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 15 1985

Honorable Glenn English
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. English:

Secretary Hodel has asked me to respond to your request of June 7, 1985, for information about the Department of the Interior's new electronic news service.

The system was established in March of this year in an effort to speed delivery of Interior news releases and speeches and reduce costs for their dissemination.

Over the last two years, many news organizations, trade associations, special interest groups, Congressional offices and other organizations have found electronic news sources and data bases to be particularly useful. In fact, 12 Congressional offices are currently testing this same system with ITT's Dialcom. All of this is made possible through word processors or computers equipped with communications capability. A news release or other timely information that would normally take two or three days to receive in the mail, takes only seconds via electronic mail sent directly to home or office.

The Department of the Interior's news releases are put into ITT's Dialcom system and automatically classified under the "Interior Department Electronic News Service." All news releases remain unedited. This service, along with similar services from other federal agencies, is available commercially to more than 100,000 Dialcom subscribers across the country. Government agencies pay for the cost of placing the releases on the system while the user (individual or organization) is charged for taking them off. All rates are in accordance with the Government wide GSA contract (GS-00K-8402-S-1081). It costs only a few cents to enter or remove a news release depending upon its length.

The National Press Club has recently undergone extensive renovation and is attempting to publicize the varied news and research systems in its new library. Under a special arrangement, each afternoon the Department electronically sends all its news releases to the Press Club library. There, a list of titles is prominently posted adjacent to the often read AP and UPI tickers. If a reporter wants to read the entire text of an Interior release, it can be called up by screen or printed out in hard copy in the library. The arrangement has ITT's Dialcom providing a terminal and printer to the National Press Club library in addition to conducting training sessions on how to use the system. To encourage use of the service, Interior has also stopped the hand delivery of its news releases to about 30 different offices in the National Press Building. This saves an Interior messenger about 10 hours a month. Interior pays for the cost of removing DOI news releases by Dialcom users in the Press Club building. For April, the cost was $64.00.

Interior maintains complete control over the editorial content of the material it enters on the system. However, it should be noted that all of the material available through the electronic news service is in the public domain and is available by mail or messenger to news media and other constituent groups.

The system is working fairly well. More than than 40 inquiries were received as a result of an announcement about Interior's electronic news service including several from trade groups, government agencies, Congressional offices, as well as news media representatives.

In the future, the Department of the Interior plans to include current speeches and policy statements on the service.

We feel this system has tremendous potential, and we see much greater use of it in the coming years. One obstacle slowing news media use, however, is a reluctance on the part of the print media to use electronic systems. After years of having paper copies hand delivered to their offices, reporters naturally don't want to change. But with costs for printing, postage, and messenger delivery continuing to rise, we believe that it is only a matter of time before this type of system will become standard operating procedure.

If you have any further question on this effort, Alan Levitt in our Public Affairs Office can be of help. He can be reached at 343-3171.

Sincerely,

David P Prosperi

David P. Prosperi
Assistant to the Secretary
and Director of Public Affairs

D. Letter From Chairman John Warren McGarry, Federal Election Commission, Dated September 30, 1985

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 30, 1985

The Honorable Glenn English
Chairman
Government Information, Justice, and
Agriculture Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Federal Election Commission is pleased to provide you with information you have requested regarding its program of public electronic access to information. The following are brief responses to issues you have identified. They are supplemented by an information packet which we provide to interested parties describing data available in the program.

1) **The origin of the decision to allow public access to computerized records.**

Since 1975, the Federal Election Commission has served as the depository for federal campaign finance disclosure reports filed by candidates and political committees. Selected information from these reports is entered into the Disclosure Data Base for purposes of indexing documents on the public record and summarizing information contained on the thousands of reports received in each election cycle. This information is available to the public in a variety of forms including microfilm copies of reports themselves, hard-copy computer indices listing documents and financial activity, and computer tapes containing summary information on completed election cycles. From its inception, the Commission has operated a storefront Public Records Office where the public can receive and review information taken from the disclosure reports, along with the reports themselves. The evolution of our process of dissemination of information has largely resulted from evolution in technology available to the Commission and some users of the data.

In response to requests from a variety of users of Commission information, the FEC began providing computer tapes containing campaign finance data under the Freedom of Information Act in 1980. All information included on the tapes is taken from disclosure reports filed by political committees and others involved in campaign finance activity, and is available for both current and previous election cycles.

More recently, in response to requests by state election officials, the Commission initiated a program of remote access to portions of the Disclosure Data Base via a telecommunications network. Currently, ten elections offices in nine states are able to receive formatted indices listing documents filed by campaigns and committees, along with certain information on contributions by individuals and committees.

As other users have expressed interest in obtaining information using telecommunications, the Commission has developed a process by which the general public can access directly information already included in the Commission's Disclosure Data Base. This service, which is available by means of the Freedom of Information Act request, simply represents another method by which the Commission distributes campaign finance information. We expect that this service will be especially helpful to those individuals, groups and organizations regularly utilizing computerized technology.

2) The type of records that are available.

The Direct Access Program provides information on two basic types of organizations; Federal candidates and their campaigns, and political committees and others involved in federal campaign finance. Listings of documents filed by these organizations, their overall financial activity, and particular contributions from individuals and committees to campaigns or other filers are presented in a variety of formats. A more detailed description of the alternatives available is included as an appendix to this letter.

3) The nature of the relationship between the FEC and its computer services contractor.

The Commission is currently operating under a computer facilities contract awarded in 1979. Under the terms of that contract, the Commission develops and maintains the Disclosure Data Base and application software while the contractor provides hardware and operations support. The vendor makes available a separate system on which selected files of information are stored, along with access ports for telecommunications at a cost agreed upon by the Commission and the vendor. These costs are borne by the Commission for connection with state election offices, and by each user under the Direct Access Program for general use.

4) The procedures for the administration of the public access program.

Requests for direct access are made under the Freedom of Information Act. Payment is made at the time of the request either for a specified number of hours or for unlimited usage by month. (The system is available for Direct Access between 10 a.m. and 10 p.m. Eastern time Monday through Friday.) Checks are made payable directly to the vendor in accordance with a decision of the Comptroller General of the United States received by the Commission in 1982 (File: B-205151). Payment is received by the Commission, which establishes access ID's and monitors connect time for accounting purposes.

5) **Cost to the Commission and to the public.**

Procedures allowing for direct payment to the vendor by users results in minimal direct cost to the Commission. Storage of information on a separate system used for Direct Access was originally made available for access by state election officials. As such, there is no additional cost to the Commission for access to these files by other users.

Administrative procedures are essentially the same as those in effect for other FOIA requests. While this program has resulted in an increase in the number of these requests, and therefore greater staff resources required to meet them, the value of the program in terms of enhanced public access to the Commission information is consistent with the overall mission of the agency.

6) **Any restrictions on use or resale of FEC files that are imposed on the contractor or public users.**

In accordance with the current facilities management contract, all FEC files and data are the property of the Commission and the vendor is precluded from using that information for other purposes. All users of information contained on reports filed with the Commission are restricted in that information about individual contributors to candidates or committees taken from reports filed at the FEC cannot be used for solicitation or other commercial purposes (see 2 U.S.C., Section 438 (a)(4)).

Please feel free to contact the Commission should you have other questions or require additional information.

Sincerely,

John Warren McGarry
Chairman

Enclosures

FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

FEE SCHEDULE FOR
FREEDOM OF INFORMATION DIRECT ACCESS PROGRAM

Fee must be paid in advance by check, made payable to National Data Corporation, and enclosed with the request for the Direct Access Program.

FULL USAGE — $1,000 per calendar month

Unlimited usage, Mondays through Fridays, 10 a.m. to 10 p.m. ET

HOURLY USAGE

User determines the number of hours of service desired.

Cost is $50 per hour of usage with a one hour minimum for each FOIA request.

Accounting is based on actual minutes used with a no minimum charge per connect.

Refunds of unused time will be available at the rate of $12.50 for each complete 15 minute period not used.

EXAMPLES OF HOURLY USAGE AND CHARGES

Request for two hours

One connect of 25 minutes
One connect of one hour 15 minutes
One connect of 20 minutes

TOTAL OF 120 MINUTES

Request for two hours

One connect of 33 minutes
One connect of one hour five minutes

TOTAL OF 98 MINUTES USED

User would be eligible for refund of $12.50 for one complete 15 minute increment remaining.

USER WILL BE ADVISED AS FUND RUNS LOW

FOI requests for renewal must allow 5 working days for processing

SAMPLE OF PROPOSED LETTER TO REQUEST DIRECT ACCESS PROGRAM FOR HOURLY USE

Freedom of Information Officer
Federal Election Commission
1325 K Street, NW
Washington, D. C. 20463

RE: FREEDOM OF INFORMATION ACT REQUEST
DIRECT ACCESS PROGRAM

Sir:

Under provisions of the Freedom of Information Act, I (we) wish to make use of the Federal Election Commission's Direct Access Program.

Enclosed is my (our) check in the amount of $______ covering an estimated _________hours use of the system at a cost of $50 per hour of use with a one hour minimum for each FOI request. I understand that accounting is based on actual minutes used with no minimum charge per connect, and that use is to be between the hours of 10 a.m. to 10 p.m. Eastern time, Mondays through Fridays. The check is made payable to National Data Corporation.

I (Mr., Mrs., Miss, Ms _________________________) will be the contact and may be reached at telephone number _____________. Please advise me (him, her) of any matters relating to this request.

Sincerely

SAMPLE OF PROPOSED LETTER TO REQUEST DIRECT ACCESS PROGRAM UNDER FOIA FOR FULL MONTH USAGE

Freedom of Information Officer
Federal Election Commission
1325 K Street, NW
Washington, D. C. 20463

RE: FREEDOM OF INFORMATION ACT REQUEST
Direct Access Program

Sir:

Under provisions of the Freedom of Information Act, I (we) wish to make use of the Federal Election Commission's Direct Access Program.

Enclosed is my (our) check in the amount of $1,000 covering utilization of the system for a calendar month, Mondays through Fridays, between the hours of 10 a.m. and 10 p.m. Eastern time. The check is made payable to National Data Corporation.

I (Mr., Mrs., Miss, Ms.__________ __________) will be the contact and may be reached at telephone number ____________. Please advise me (him,her) of any matters relating to this request.

Sincerely

BEST COPY AVAILABLE

E. LETTER FROM JOHN F. MURPHY, ASSISTANT ADMINISTRATOR FOR LEGISLATIVE AFFAIRS, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, DATED NOVEMBER 21, 1985

NASA
National Aeronautics and
Space Administration

Washington, D.C.
20546

Reply to Attn of

C:LM:C17110;A57049f

NOV 21 1985

Honorable Glenn English
Chairman
Subcommittee on Government Information,
Justice, and Agriculture
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The following is forwarded in response to your letter of September 30, 1985, requesting information on publicly available electronic data bases at NASA.

The Space Act of 1958 chartered NASA "...to provide for the widest practicable and appropriate dissemination of information concerning NASA's research activities and their results." NASA developed the government's first online technical information retrieval system, which operates today as NASA/RECON. As described in attachment A, NASA/RECON makes NASA's aeronautics and space data base more accessible to the aerospace research community of NASA, other government agencies, and their contractors.

Access points to NASA/RECON currently total 467 terminals or passwords. Access is restricted to NASA Headquarters and Centers, NASA contractors, other Federal agencies and their aerospace contractors, and universities with courses in aerospace and engineering. NASA Industrial Application Centers, which serve the public, do access the RECON system directly on behalf of those with whom they are working.

User charges for NASA/RECON services are as follows:

Enrollment fee	$60/year
Annual Maintenance Fee	$60/year
Search Time	$24/connect hour
Telenet	$13/connect hour
Citation Printing	$0.05/citation
Offsite Training	$50/person

NASA/RECON and the data base are maintained under contract by RMS Associates as the contractor operator of the government-furnished NASA Scientific and Technical Information Facility (STIF). User charges are collected by the contractor, based on the prorated cost of the services provided, including all hardware, software maintenance, and operating costs.

There are no profits associated with RECON usage charges by STIF, as they recover prorated costs of services provided, in accordance with current guidelines governing Federal ADP cost recovery requirements. All revenues collected are used to offset the cost of the operations contract of the STIF to NASA. The contents of the data base are the property of the U.S. Government.

Restrictions on resale or redistribution of data are covered in the contract the user signs with STIF before receiving access to RECON, (see Attachment B, Paragraphs 5 and 6):

> "Access is permitted only within the U.S. and to U.S. citizens, unless specifically authorized. If citations are printed, the output must be similarly restricted.
>
> "The user agrees not to sell or lease any information, data and/or printouts obtained under this agreement unless specifically authorized."

In addition to the foregoing access provided via RECON operated at STIF, commercial distribution of a portion of the data base is covered under a broad contract with the American Institute of Aeronautics and Astronautics (AIAA) in New York. This contract grants to the AIAA exclusive rights to create a project for marketing a portion of the entire data base which is referred to as the Aerospace Data base. This file is a combined tape version of what has been previously published in two abstract journals, Scientific and Technical Aerospace Reports (STAR) and International Aerospace Abstracts (IAA).

The agreement was entered into on the condition that AIAA bear all marketing and operating expenses incurred on the special project, with any proceeds of the marketing project in excess of said expenses being used to defray costs of producing the data base. Since the marketing project is just underway, and only one vendor (Lockheed DIALOG) has begun to provide access to the data base, such proceeds are just beginning to be received. Their dispensation will be negotiated between NASA and AIAA. Pertinent text of NASA's agreement with AIAA follows:

> During each contract year the income received from the search and retrieval services offered by licensors and lessors of the Aerospace Database shall be used to offset the AIAA marketing and operating expenses incurred on the Aerospace Database project. Income in excess of these expenses shall be apportioned between the AIAA and NASA. This apportionment shall be determined, in the contract period, by the proportion of Scientific and Technical Aerospace Reports (STAR) and International Aerospace Abstracts (IAA) accessions contained in the total Aerospace Database. That portion based on the STAR content shall be used to offset contract costs in the same manner as IAA Income From Subscribers. That portion based on the IAA content shall be used, by the AIAA, to enhance its AIAA/TIS operations. These enhancements may include supporting additional accession coverage through increased

labor, materials, services, acquisition of equipment or specialized software packages, or special study programs/projects within the AIAA/TIS scope. All enhancements to the AIAA/TIS operations shall be utilized in conjunction with the activities performed under the NASA contract in consideration of the cost sharing nature of the Aerospace Database project and will be the property of the AIAA. The nature of these enhancements shall be mutually agreed upon by the AIAA and NASA during each contract period. If agreement is not reached then these excess funds will go to increasing the International Aerospace Abstracts (IAA) accessions in the Aerospace Database.

With regard to electronic news distribution, in late 1984, the NASA Headquarters News and Information Branch contracted with ITT Dialcom for the electronic dissemination of news releases and other topical information pertaining to major NASA programs and projects. This action was taken in an attempt to increase productivity and cost effectiveness by speeding the release of information; reducing the manpower requirements for news call-outs; and the eventual goal of eliminating the production, printing and mailing of news material.

The NASA electronic news program was made a part of the Dialcom FEDNEWS service, which has a number of government entities participating. NASA is responsible for data input and maintenance, data which includes press releases, status reports, mission reports, the shuttle manifest and crew assignments, a calendar of events, and an index of news releases. Dialcom provides hardware and software maintenance, and the accounts for users.

Feedback information from Dialcom indicates that the FEDNEWS systems is widely used by several hundred news organizations, corporations, embassies, and trade associations.

We will be happy to supply any further information you may need.

Sincerely,

Jack Murphy

John F. Murphy
Assistant Administrator
for Legislative Affairs

Enclosures

ATTACHMENT A

NASA/RECON

NASA/RECON is an online, real-time, time-shared information retrieval system developed by NASA for quick access to over two million records of worldwide origin (1.8 million documents and 500,000 books). NASA/RECON is the government's first online technical information system, with development initiated in the mid-1960's and having become operational in 1969.

The name RECON is derived from Remote Console. It is a computerized system consisting of a central data bank employing an IBM-4341 with an 8 Megabyte core memory, two IBM-3380 disk drives and twenty 3330-1 disk drives, totaling 9.04 billion bytes of storage.

Access to the central computer bank is afforded by a query station consisting of a UTS-400 (UNIVAC Terminal System) keyboard and a video screen (CRT) or a Dial-In terminal, both types usually equipped with teleprinters, the latter which are used as a conversational interface between the analyst and the keyboard/video screen combination.

STIMS, meaning Scientific and Technical Information Modular System, is a set of IBM/360 modules and data sets designed as a generalized storage and retrieval system for large data bases. Its main functions are generalized file maintenance, computer-aided photocomposition, and information retrieval. STIMS consists of four subsystems:

- File Maintenance Subsystem
- Batch Search & Retrieval Subsystem
- Publication Subsystem
- Online Interactive Retrieval System

The major components of RECON/STIMS are five inverted files with postings, i.e., Subject Term, Corporate Source, Personal Author, Contract Number, and Report Number. Inverted files are alphabetized files (A to Z followed by numerics) that are generated from the linear (or bibliographic) files. The retrieval points have been augmented by "text" search capabilities for all of the titles back to 1962 and for the abstracts of *STAR* and *IAA* back to 1972. Subject searching coupled with text searching of titles and abstracts for massive file collections results in the best retrieval technology known today. Subjects heretofore hidden now appear in microseconds. Examples of easily accessed subjects by text search could include: 316 stainless steel, NEMP (Nuclear Electromagnetic Pulse), Ti-6Al-4V (an alloy), strapdown/strapped-down/strap down (variants in spelling), and L-1011 (a jumbo jet).

The major document series accessible on NASA/RECON are:

- Scientific and Technical Aerospace Reports *(STAR)*
- International Aerospace Abstracts *(IAA)*
- NASA Research and Technology Objectives and Plans *(RTOPS)*
- NASA Research and Development Contract Search File
- NASA Tech Briefs
- NASA Library Collection

A typical *STAR* document citation, stored on the disks, consists of an Accession Number, Corporate Source Code, Title, Personal Author, Descriptive Note, Contract and Report Numbers, Major and Minor Index Terms, an Abstract, and standard Base Data (copyright, access level, special handling, availability, country of publication, number of pages, etc.).

Searching is performed on the inverted files and search results could be the yield from a single set—or the combination of several sets resulting from Boolean operations of OR, AND, and NOT. A search is formulated and displayed on a video screen or teleprinter through Boolean interaction between or among sets. A live interplay between the analyst and the online file affords an expansion or narrowing of search results through optimization of the search strategy.

Keying techniques, strategy formulation, display of citations, modifications, and off-line printing of desired citation sets are easily learned after a modest amount of training.

NASA policy permits online access to NASA/RECON for all government agencies, contractors whose scientific and engineering activities relate to aeronautics and space research, and universities or other organizations with aerospace-related grants, contracts or programs of interest to NASA. Fees for NASA/RECON services are charged on a cost-recovery basis as follows:

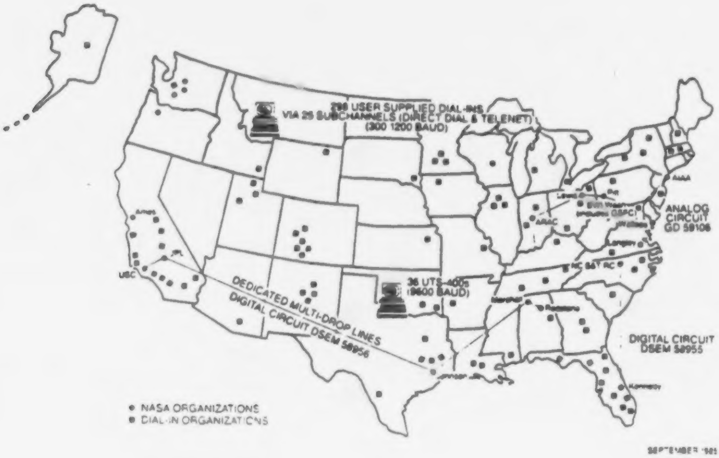
• NASA/RECON Enrollment Fee	$60.00	To initiate service
• Annual Maintenance Fee	60.00	Prorated for first year
• Search Time	24.00	Connect Hour
• Telenet	13.00	Connect Hour
• Citation Printing	0.05	Each printed at NASA STI Facility
• Offsite NASA/RECON Training	50.00	Cost per person

Eligible domestic organizations desiring NASA/RECON terminal access should submit requests in writing to the Scientific and Technical Information Branch (Code NIT-2).

NASA/RECON training is conducted 3 or 4 times per year at the NASA STI Facility, BWI Airport, MD. Offsite training is also conducted about 3 or 4 times per year—at other geographical locations as appropriate to meet needs on a cost effective basis. Hotline assistance for technical subject searching is always available from 8:00 a.m. to 4:30 p.m. ET, daily. Additional instructions are available through manuals, pocket guides, and the NASA STI RECON Bulletin and Tech Info News.

Almost 450 passwords have been issued to other government agencies, NASA and other government contractors, and to several universities. All searching is conducted on a time sharing basis—from 8:00 a.m. to 8:00 p.m. ET, daily, Monday through Friday. Print commands are entered on the keyboards for desired search results and printed off-line by the Facility computer at night. The search results are sorted by terminal number and mailed to the users the next day.

The attachment portrays the NASA/RECON System as of September 1,1985.


298 USER SUPPLIED DIAL-INS
VIA 25 SUBCHANNELS (DIRECT DIAL & TELENET)
(300 1200 BAUD)
Ames
JPL
USC
AIAA
ANALOG CIRCUIT GD 59106
ARAC
Langley
36 UTS-400s
(9600 BAUD)
DEDICATED MULTI-DROP LINES
DIGITAL CIRCUIT DSEM 58956
DIGITAL CIRCUIT DSEM 58955
Johnson
Kennedy
• NASA ORGANIZATIONS
• DIAL-IN ORGANIZATIONS
SEPTEMBER 1985

ATTACHMENT B

AGREEMENT
between

User Organization
and
RMS Associates
NASA Scientific and Technical Information Facility

This agreement between RMS Associates and the User Organization named above is intended to set forth the terms and conditions for each party in connection with the User Organization being permitted access to the NASA/RECON File collections at the NASA STI Facility.

1. RMS agrees to provide:
   a. Access via dial-up terminals to NASA/RECON during the time period 8:00 AM – 7:30 PM ET Monday through Friday, excluding Federal holidays.
   b. User manuals, user bulletins, vocabulary updates, corporate source updates, and other training/user aids as issued for use with the NASA/RECON system.
   c. Annual training course at the NASA STI Facility for at least one individual. RMS reserves the right to specify the time, length, and type of training.
   d. Assistance during normal operating hours (8:00 AM – 7:30 PM ET) to resolve operating problems and difficulties.
   e. A single password that is unique to that organization and site. Separate sites that qualify can be issued separate passwords.
2. The user organization agrees to provide:
   a. Personnel to operate its dial-up terminals.
   b. Dial-up terminals that are compatible with the NASA/RECON system.
   c. Installation and service of communications equipment used to access the NASA/RECON system.
   d. Representation, if desired, at the training courses conducted by RMS, including salaries, travel and other expenses of these personnel during the training period.
   e. Protection from unauthorized access to and use of the NASA/RECON system or the password for the NASA/RECON system. This password is not to be shared with other organizations or sites. Person and organizational unit to which the password is issued will be charged for all use.
   f. Periodic reports, upon request by RMS, on the use of system, and feedback evaluation forms on the system as required by RMS.
3. The user organization agrees to pay:
   a. System charges for online usage of NASA/RECON. System charges will be calculated annually and rate changes shall become effective after the user organization has been given a minimum of 60 days notice. Current system charges are as follows:

Computer Connect Time (per hour)	$24.00
Citation	$ 0.05
User Maintenance charge, first year (per password, prorated)	$60.00
User Maintenance charge, after first year (per password)	$60.00
Telenet (connect hour)	$13.00
Off-site NASA/RECON Training (per person)	$50.00

   b. Communications charges which will be the "common carrier" charges and will be levied by the communications companies.

4. Does your organization have a substantiated need to access references to limited Dept. of Defense and/or classified documents? Yes ☐ No ☐

   If the Yes block is checked, please have your security officer complete the attached FF715 and return it together with this agreement form.

5. Access is permitted only within the U.S., and to U.S. citizens, unless specifically authorized by RMS. If citations are printed out, they must be similarly restricted.

6. The user agrees not to sell or lease any information, data and/or printouts obtained under this agreement unless specifically authorized by RMS. An exemption from this requirement is granted when such information is used as a part of, and is incidental to a scientific report or study.

7. Both parties will designate project officers responsible for the administration of the agreement.

8. This agreement shall remain in effect until amended by mutual consent or terminated by either party upon 30 days written notice. Failure of the user organization to adhere to the terms of this agreement will result in an immediate denial of access to the NASA/RECON system. Should the incumbent Contractor Manager (RMS) be succeeded by another Contractor Manager during the term of this agreement, such successor shall automatically be substituted as the "Contractor Manager" in this agreement.

For ______________________________
Signature

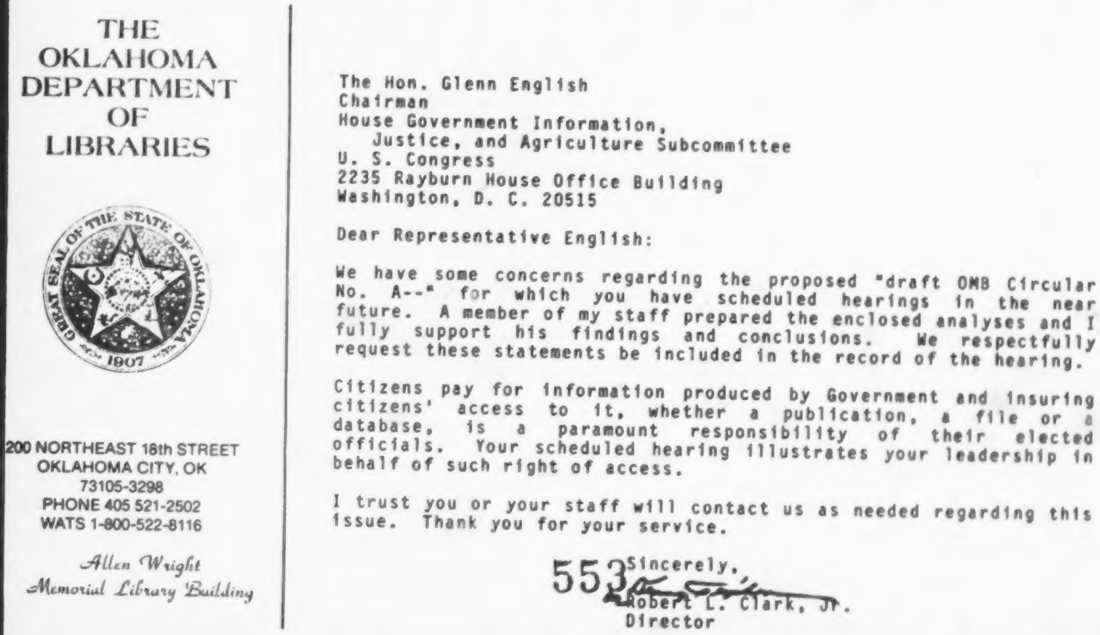
____
Name and Title (Typed) (Date)

For RMS Associates Contractor Manager
Scientific and Technical Information Facility
National Aeronautics and Space Administration

____
Robert E. Johnson, General Manager (Date)

APPENDIX 9.—MISCELLANEOUS MATERIALS SUBMITTED TO THE SUBCOMMITTEE

A. LETTER FROM ROBERT L. CLARK, JR., DIRECTOR, THE OKLAHOMA DEPARTMENT OF LIBRARIES, OKLAHOMA CITY, OKLAHOMA, DATED APRIL 17, 1985



THE
OKLAHOMA
DEPARTMENT
OF
LIBRARIES

1907

200 NORTHEAST 18th STREET
OKLAHOMA CITY, OK
73105-3298
PHONE 405 521-2502
WATS 1-800-522-8116

Allen Wright
Memorial Library Building

The Hon. Glenn English
Chairman
House Government Information,
Justice, and Agriculture Subcommittee
U. S. Congress
2235 Rayburn House Office Building
Washington, D. C. 20515

Dear Representative English:

We have some concerns regarding the proposed "draft OMB Circular No. A--" for which you have scheduled hearings in the near future. A member of my staff prepared the enclosed analyses and I fully support his findings and conclusions. We respectfully request these statements be included in the record of the hearing.

Citizens pay for information produced by Government and insuring citizens' access to it, whether a publication, a file or a database, is a paramount responsibility of their elected officials. Your scheduled hearing illustrates your leadership in behalf of such right of access.

I trust you or your staff will contact us as needed regarding this issue. Thank you for your service.

Sincerely,

Robert L. Clark, Jr.
Director

Concerns of the Oklahoma Department of Libraries with
Draft Office of Management and Budget Circular No. A--
as Proposed in the Friday, March 15, 1985 Federal
Register, pages 10734-10747, and Corrected by the
Thursday, March 21, 1985 Federal Register, p. 11471.

There are a number of problems the Oklahoma Department of Libraries is concerned with in the proposed draft of OMB Circular A--.

The "Analysis of Key Sections" on Sections 8 and 9, "Information Dissemination", Federal Register page 10735, states that

> The mere fact that an agency has created or collected information is not itself a valid reason for creating a program to disseminate the information to the public.

This is tolerable if and only if the examples that follow in the analysis are thoroughly spelled out and integrated into the proposed regulations themselves. These examples clarify the type of information that an agency need not consider: "e.g., compilations of routine attendance records for Federal employees, or the publications of the thousands of pages common carrier tariff filings by regulatory agencies." (The bad grammar is OMB's.) It would be better if there were a comprehensive listing of such data determined to be reasonably useless to the public actually written into the proposed regulations rather than a few examples in an analysis agency personnel are supposed to follow as "guidelines by analogy", and which may result in widely-varying interpretations by different agencies. In the actual proposed regulations there is no mention of the examples noted in the analysis section, or any other similiar information.

The "Analysis of Key Sections" on Sections 8 and 9, Federal Register page 10735, also states that

> Given a statutory and mission-related basis, agencies must also ask themselves whether a proposed or existing information product or service substantially duplicates similiar products or services that are already available, either from another agency or from the private sector.

This section is either contradicted by or must be amended by a later section of the "Analysis of Key Sections" on Sections 8 and 9:

> In addition, agencies should take care that they do not permit contractors functioning as sole suppliers for the government to exercise monopolistic controls in ways that defeat the agencie's information dissemination obligations, for example by setting unreasonably high prices.

Does this mean that if an existing or proposed member of the private sector charges or is expected to charge "unreasonably high prices" for government information, that member should not have his contract renewed or never be given the contract in the first place? These two sections of the "Analysis of Key Sections" need to be brought together and clarified, and the result of that clarification needs to be included in the actual proposed regulations, not just in the "Analysis of Key Sections".

There is one final problem with Sections 8 and 9 of the proposed regulations. These state that

> Dissemination is essential to the agency's accomplishing its mission, and the products or services do not duplicate similiar products or services that are already provided by other government or private sector organizations, or that could reasonably be expected to be provided by them in the absence of agency dissemination. (proposed regulations, Section 8, a,8,a,b)

How can an agency member make such a determination? This needs to be clarified by guidelines that will provide for consistency among Federal agencies.

A later paragraph in the "Analysis of Key Sections" on page 10736 states that

> For example, where the information is already substantially available in printed form, agencies should consider dissemination in electronic form to be service of special benefit, the costs of which should be recovered through user charges.

For such data bases as the U.S. Bureau of Labor Statistics' Consumer Price Index, Employment, Hours, and Earnings, Labor Force, and Producer Price Index data bases, and other similiar government data bases, although there are printed publications produced from them that contain information also found in the data base, there is also more information in the data bases that will never be printed. In such data base--publication relations as these, the information is not "already substantially available in printed form". Such data bases should be considered for dissemination without user charges to the Federal Depository Libraries through the Depository Library program administered by the Superintendent of Documents, Government Printing Office. Such distribution can be justified as falling within the definition of "government information" as defined in the proposed regulations, Sections 6B and 6C, and the Superintendent's statutory authority to distribute government publications as found in 44 U.S.C. 1901-1914. This consideration should be written into the proposed guidelines.

Prepared by S. Beleu, U.S. Documents Reference Librarian
April 10, 1985

B. STATEMENTS FROM HOWARD J. HILTON, VENICE, FLORIDA

STATEMENT
by

Howard J. Hilton

for the
Subcommittee on Government Information, Justice and Agriculture

This statement is organized to respond to the eight categories of questions which the Chairman set forth in his statement to the House contained in the Congressional Record of March 14, 1984, at page H 1615.

A. Public Access

Public access to information is the foundation of democracy.

"Knowledge will forever govern ignorance," as James Madison so accurately wrote, "and a people who mean to be their own governors, must arm themselves with the power knowledge gives."

The maintenance of information in electronic form can provide the people with direct access to public information at much less cost than under the present system involving paper files. All documents prepared for the public should be in digital form and should be broadcast on the day of release.

Any information requested under the Freedom of Information Act should be made public. If the information is available in electronic form, it should be broadcast as one means of delivery. Any agreement by any agency requiring the agency to deny request for records in an automated form is contrary to public policy and should be legally prohibited.

B. Contractors - Rights and Responsibilities

It is not realistic to expect contractors to operate electronic filing systems at no cost. It is only a question -- who pays and how much? If a contractor has a monopoly over a database, it is only logical that the contractor would set a price to maximize the return on investment.

The proposal for the automation of the information of the Securities and Exchange Commission is a case in point. A study prepared for the Commission makes the following points:

- There is a potential upper bound of 1.9 million subcriptions if the price is less than $300 per year."
- The maximum total value to potential consumers is over $2 billion.
- A monopolist would maximize profit by charging $4,800 per year to 238,554 consumers yielding $1,151,000,000.

The annual cost to the contractor, according to information provided the Subcommittee by Chairman Shad, on April 29, 1985, is expected to be $10 million a year.

Since all information produced by the government and released to the public should be in the public domain, it is the public which owns the data in a contractor-operated electronic file. If a contractor reorganizes or supplements the data, then the addition would be a value added service. This would be the property of the contractor unless it was performed as part of the contract in which case it would be in the public domain.

In this situation, there is no problem concerning rights in the data in the event of a change in contractors.

C. Submitters - Rights and Responsibilities

Electronic filings offer substantial savings for all concerned. Using computer records of W-2 and 1099 forms, the Internal Revenue Service could send taxpayers a computer printout of their records. If accurate and complete, the taxpayer could pay or receive a refund. The IRS estimates that this would save 97 million hours by taxpayers and $1.9 billion now paid for preparation of tax forms.

The same could be the case for Medicare payments. This would relieve many elderly people of the burden of filing forms and worrying about refunds.

Since most of the submitters would be corporations, professional associations of lawyers and doctors, and those organizations filing statements, electronic filing would be an advantage instead of a burden.

Submitters should not be required, but rather encouraged, to file documents in electronic form. Until considerable experience has been gained, documents legally correct on paper should not be rejected. There should be no retroactive requirement for electronic filing.

D. Privatization of Government Functions

Since an agency should be prepared to accept paper filings, the only legal effect of a rejection of an electronic filing would be time. This is not a serious consideration. With electronic filings, compliance with agency requirements can be ascertained within minutes of receipt and and paper filings can be substituted if necessary.

Only the agency, in the final analysis, can make a decision concerning the public availability of information. Any information made available to one should be made available to all including the identity of the one requesting the information.

E. Monopoly Issues

Granting monopoly rights over information distribution should not be an element in the contracts for the operation of electronic filing systems. The broadcast of all information released to the public would put that issue to rest.

Since there are legal opinions justifying the right of agencies to grant contractors monopoly rights over information or information distribution, this issue may have to be decided by legislation.

There is a basic difference between the print and paper production and distribution of information and an electronic system. This difference can be summed in two words - time and cost. Time is measured in minutes for electronic distribution compared with days for the mail service for paper.

In Florida the cost of production for a government document is $0.015 cents per page per user excluding postage. The costs for electronic distribution via satellite are millionths of a cent per page per user.

But even more important than the cost is the time. The President's tax proposal provides an excellent example of the information distribution system as it operates and as it could operate. On May 28, 1985, The Wall Street Journal announced that "copies of President Reagan's tax proposal will go on sale tomorrow at the Government Printing Offices throughout the nation" at a price of $18.00 per copy. As of June 29th no library in Sarasota county had a copy.

Since this document was undoubtedly produced on word processors, the text would be available in digital form. It could have been broadcast by satellite to all of the libraries in the United States for less than $300.00.

Sarasota county could install downlink equipment for approximately $4,000.00. It could use this to downlink for distribution to all libraries, schools, and offices in county using an ITFS (Instructional Television Fixed Service) system. The cost of a system to enable libraries to make this type of information available to the public would cost about $10,000.00. Depending upon the scope of information delivered by the Federal Government, this investment would be recouped in less than a year through direct cost reductions in handling government documents and in improved service to the public.

The hardware for implementing such a system is available today. On the broadcast end, Australia is presently implementing a B-MAC (Multiplexed Analog Components) system. The cost for B-MAC compatible earth stations will be about $1,500.00 plus delivery and installation. As John D. Lowery noted in his paper "B-MAC, An Optimun Format for Satellite Television Transmission", the standard data channel operates at 94K bits per second. "Any audio channel can be assigned to data transmission and reception, each channel providing 320K bits per second. Full field data is also available by replacing the picture with digital information. This yields an additional 10.8 million bits per second."

If a library or office uses an optical videodisc for archival storage, then in addition to a microcomputer, it would need a videodisc player, a controller, and a multihost interface, all of which would cost approximately $10,000.00. With this system, a library could provide its patrons with access to the one million aeronautical photo collection of the Smithsonian for $300.00, to the one million records of the Library of Congress for less than 5 hours of access time on any of the commercial online database systems, and to all types of information now unavailable in libraries.

Since all digital data submitted and broadcast would be in ASCII code, the question of specific hardware requirement should not arise.

F. Fairness

The broadcast of information solves the questions of fairness with the possible exception of contractors taking advantage of information prior to its release.

G. Archives

If all electronic records have to be stored on optical discs, uniquely identified, and indexed, then the government records will be in better shape for historical purposes than they are at present.

H. Miscellaneous

A definite need exists for the establishment of some government-wide standards for electronic filing systems developed independently by several agencies. The most urgent standard is the unique identification of all information in a structured format and indexing in depth on the basis of a five category index system.

If a contractor is granted exclusive distribution rights for information in an electronic filing system of an agency, then the agency is either selling an asset or giving it away for a consideration. Information in an electronic medium differs from all other types of goods and services which the Federal Government sells or provides.

Unlike land leases which can only be enjoyed by a few, information can be used and enjoyed by all. Information can be distributed to millions by broadcast at the same cost as distributing it to one. Just as nuclear explosives differ from conventional forms, so does information in digital form differ from that available only in paper. Both require a change in attitudes and procedures, and both have the potential of signicantly changing the human condition.

As indicated by the attached outline, describing "An Essential Concept for the Effective Implementation of the Paperwork Reduction Act of 1980", electronic systems offer great possibilities for decreasing the burden of supplying information and increasing it usefulness.

If information is uniquely identified and broadcast in ASCII, then the variation of hardware and software do not pose a problem for document retrieval. The problem arises when the various categories of information are identified differently by agencies and when the differences between comparable data are emphasized rather than reconciled.

With the broadcast of information, the security problems arising from the remote access of the database are eliminated. The only problem is the security and accuracy of the information communicated by remote access. This can be handled by use of appropriate encryption techniques. The accuracy and authentication of the document can be handled in the same way.

Errors in broadcast distribution can be detected by comparing the signals received with those that are sent.

Rather than user charges, which would be unnecessary with the broadcast of information, it would be more appropriate to handle all legitimate charges by an information tax. One dollar per return would more than cover the total costs of the broadcast of the information and the installation of systems such as contemplated by the SEC.

The broad question posed by the electronic automation of government information is the impact that it will have on schools, communities, local governments, businesses, and families as they adjust to the proliferation of computing power. Some will gain, and some will suffer. If the Federal Government provides the leadership in promoting the broadcast of information in digital form, more will gain and fewer will suffer. In any program to grant exclusive rights to information or to limit public distribution of information, few will gain and the people will suffer the consequences.

Addendum prepared for the Hearing October 1, 1985
to the statement by
Howard J. Hilton

This addendum to the statement originally submitted June 28, 1985 is prompted by several developments: a visit to Washington, D.C. in August, the White House Conference on Small Business, the hearing on the Patent and Trademark Office and the National Library of Medicine, the Governors' report on U.S. Education 1991 with its task force on new technology under Governor Sununu, the consideration by the Joint Committee on Printing of the distribution of Government publications in electronic format to Depository Libraries, and the growing concern about U.S. trade balances.

In 1967 I served as Chairman of the Ad Hoc Task Group on Legal Aspects Involved in National Information Systems established by the Committee on Scientific and Technical Information of the Federal Council for Science and Technology. As stated in its report,

> The principal general observation to be drawn from the work of the Ad Hoc Task Group is that the scientific, technical, and economic progress and international competitive position of the United States depends on the ready access to information as well as its effective use.

This observation is as valid today as it was in 1967. Then the National Library of Medicine was one of the pioneers in organizing and distributing information. The Patent and Trademark Office with its automation program is now in a position to increase the ready access to its valuable datbase and to make it possible for both large and small business to put it to effective use.

One thing that I have observed in the few papers that I have received from these hearings is that there has been little effort to provide a vision of the future. I would like to contribute my vision before addressing the specific developments.

To understand better the implications of the transition from an industrial society to an information society, it is necessary to examine some of its special aspects. The information society can be viewed as a number of various industries, companies, organizations, and individuals. These would include the knowledge industry, the information industry, the data industry including the production of hardware and software, communications, government, education, the professions, and others. In this information society the connection between producers and users is much more direct and pervasive than in an industrialized society. This is evident in one aspect of the transition which is the shift from centralized print and paper distribution of knowledge and information to electronic distribution.

The change by individuals from use of information in paper form will be slow, but the transition in the delivery of the information to local on-demand printers and copiers will be much faster. Many of these local print product producers will have the documents, whether they be books, catalogs, directories, government publications and databases, etc, on optical discs. Some of them will be in encrypted form. Since the printer will have the key, an individual can call and order a book, article, legal decision, or other type of information such as a propectus or company report. When the book size electronic storage and display arrives, the local printers can be the source of information to be transferred to the electronic storage. Technology is an irresistable force moving in this direction. It will produce many small companies and a new industry that I call telinfocom (tele information communication).

Information Society

Societies have been classified by some scholars on the basis of their employment of human resources -- that is to say, the type of occupations in which the majority of people are employed. Using this standard, societies have been described as proceeding from nomadic to agricultural then to industrial and now to the information society. In the United States this stage was reached sometime in the last couple of decades, when more than fifty percent of our labor force became engaged in information production, utilization, distribution, or consumption. In 1983, the figure was 54 percent of the labor force and is expected to rise to 67 percent by 1990.

Other people view this process of change in terms of waves. For Alvin Toffler, "THE FIRST WAVE was the Agricultural Revolution ... THE SECOND WAVE was the Industrial Revolution ... THE THIRD WAVE is the mightiest of all ... the high speed revolution that is striking us now." For him, the information society is the result of the "...enormous jump in the amount of information we exchange with one another."

By either definition we have at present an information society based on print and paper distribution of knowledge and information. What is happening, however, is an electronic revolution which will have an impact on our existing institutions comparable to that of the industrial revolution and the development of printing. This transition to an electronic information society is producing a period of profound change---

- in attitudes respecting the processes involved in the storage, retrieval, and distribution of knowledge and information;
- in the technology of radio, TV, computers, laser discs, robots, and satellites to improve these processes;
- in the actions of some Governments to support these changes;
- in the techniques and processes utilized by organizations to achieve their objectives; and
- in the composition of the work force of which the

> information sector will account for 67% in 1990, according to estimates in *Computerworld* 11/5/84.

In Toffler's view, as a result of the growing diversity of civilization, "People crave more information and the entire system begins to pulse with higher and higher flows of data. By forcing up the amount of information needed for the social system to cohere, and the speeds at which it must be exchanged, the Third Wave shatters the framework of the obsolete, overloaded Second Wave info-sphere and constructs a new one in its place" (p. 178).

The major trends have been described in general terms by a number of popular authors. In addition to Alvin Toffler, John Naisbitt in *Megatrends* illustrates Toffler's point emphasizing the reduction in the information float. Paul Hawken in *The Next Economy* sees the need to adapt to the rising cost of energy as one of the main forces creating what he calls the "informative economy." In his view, "The future of America now belongs to individuals and companies, large and small, that understand the shift in emphasis from mass to information and can meet it" (p. 27). Jacques Vallee, in *Network Revolution: Confessions of a Computer Scientist*, expresses his belief that, as a result of computer networks, "the United States is at the threshold of its greatest leap forward." The *Electronic Nightmare: The New Communications and Freedom* by John Wicklein describes the shape of things as a danger of losing our liberties. In slightly different formulations, all authors seem to agree with Sippl and Dahl. In *Video Computers* they write: "Right now--today--the many inventions and refinements of the last hundred years or so are starting to come together in such a way that they feed on themselves. They generate knowledge and communication that in turn generates more knowledge and communication" (p. 183). All of this will bring, as Anthony Smith writes in *Goodbye Gutenberg: The Newspaper Revolution in the 1980s*, "an important shift in the way we treat information, the way we collect and store it, the way we classify, censor, and circulate it. People will regard the process known as education in a quite different light in a society in which human memory will be needed for different purposes than in the past; we shall think of librarians, journalists, editors, and publishers as different creatures from those of today, since they will be involved in different mutual relationships, using different technology" (p. 324).

Although computers, especially personal computers, are making rapid progress in the numbers in use in offices, homes, and schools, their full impact is yet to be felt. At present they are utilized primarily to solve problems, to perform tasks, and to entertain. Two other major functions are only now emerging. These are (1) to provide access to knowledge and information required for business, education, good government, entertainment, and the maximization of resource allocation, and (2) to provide an inexpensive and secure means for communication with correspondence control for storage and retrieval. Because institutional change comes slowly, the transition from a centralized print and paper system for the distribution of knowledge and information to one based upon optoelectronics will probably take place in two stages.

First Stage of the Transition

The first stage will replace the centralized printing and distribution of information by a decentralized system in which agencies, companies, libraries, professions, and other groups and individuals, especially students, will identify desired information in opto-eletronic media or ephemeral storage of broadcast information and will receive paper copies from local printers or from in-house copiers or print stations. The cost of the copies will include, where appropriate, copyright royalties.

The driving force in this transition is the technology which can provide more effective access at lower cost. The introduction of paperback books in the thirties may give some clue as to the speed with which this first stage may be substantially completed. Because earlier attempts at marketing paperback books in the U. S. ended in failure, it also teaches us the importance of the right concept for developing the product. In that case, as in the present transition, the two factors of supreme importance were better access and lower costs.

For the past 500 years books and manuscripts have been the most effective method available for storing knowledge and information and for providing random access to it. Then microfiche emerged as a possible challenger. While this medium provided a cost advantage over paper, for most people the medium did not provide an advantage in performance. The trend in the electronic medium is clear. It will eventually provide cost and performance advantages of ten to a hundredfold over books and paper. This will be achieved when one can use an electronic device to order all public information from a satellite and to store it in an electronic book.

Comparison with the Thirties

In order to put this in perspective, consider the situation in the late thirties when discretionary income was low from the great depression. Someone has an innovative concept. Since books are so expensive, why not publish cheap paperback books. They would have two advantages: much easier to carry and so inexpensive that losing one would be of little consequence. By using material in the public domain, the risk of loss would be minimal, and the sale of 100,000 or so would be a breakeven point. Why not start with five tragedies of Shakespeare. Although in the previous twenty years there had been several attempts to sell paperback books in the United States, all had failed. As a result of a new marketing concept, this venture produced sales of more than 2.5 million copies of Shakespeare's _Five Tragedies_.

Some such scenario launched the paperback book explosion in the thirties, which made books readily available at prices millions could afford. The key concept was marketing. World War II undoubtedly facilitated the transition which in some forty years has changed the market. From 100 percent of books sold before the thirties, hardbound books, in 1978, accounted for less than 30 percent of the 1.6 billion books sold in the United States. The price of hardbound books averaged $23.96, compared with mass market paperback books, which averaged $2.06 and trade or higher paperbacks, which averaged $7.21.

The Second Stage

The second stage in the current transition will be even more dramatic. It will undoubtedly see the production of the electronic book. This will probably be a flat screen about the size of a hardbound book and about as thick. It should be capable of providing color and black and white resolution equal to the best printed product and of providing access to the equivalent of more than 50,000 pages. One will be able to access the pages on the basis of a sophisticated retrieval system either by touch or voice and to change the contents of the electronic book. The local printers can still play an important role in reproducing the content to be stored in these electronic books and in handling the distribution and payment. It will be a new industry, and one more stage in the evolution of the Information Society which could eventually have all recorded public information stored in a satellite to be delivered upon command and payment.

Actions and Policies of the Federal Government

The Federal Government can support and encourage this transition or it can restrict it. The most decisive single act in support of a more effective distribution of its information would be the requirement that all agencies broadcast all public electronic information. This would include all public information generated by word processors or added to existing databases. This requirement would preserve in electronic form much of the information that is now produced on word processors and submitted as reports to Congress in paper form and never preserved in electronic form. In these instances both the Congress and the people are the losers.

Instead of encouraging the widest and least expensive distribution of information, the present inclination of some in Washington is to restrict the distribution of information or at least not to use the method of distribution that would have the potential of reaching the greatest number of interested individuals at the lowest cost. An example of this attitude is provided by the "Electronic Patent-Data Dissemination Guidelines". As published in the Federal Register for June 14, 1984, they provided that "bulk resale of PTO data by commercial data base vendors will be prohibited by the terms of the bulk sale agreement." On the basis of this statement, a company could not distribute the total database in a different electronic medium.

In its three volume report to the Congress dated December 1982 under Section 9 of P.L. 96-517, it was recognized that

> Patent information dissemination is important because of the 'multiplier' effect technological disclosures have on further invention and potential infringement. Trademark information dissemination is important because it allows businesses to determine the availability of marks and the existence of potential infringement. Dissemination is limited by paper files located only in the PTO in Washington, D.C. area. The files are costly to reproduce and maintain in more accessible locations around the country.

Although the PTO was urged in its public hearing held July 23, 1981 to use satellite broadcast for the distribution of all public information, no steps have been taken to implement such a program which would have resulted in the reproduction and maintenance of PTO files in numerous accessible locations around the country. In fact in the status report prepared August 27, 1984, there is no mention even of the importance of information dissemination to the public.

All of the information which I have seen indicates that the automation of the PTO is well planned and executed. It will be a great boon to the country. It is now in a stage where the PTO could participate in pilot projects to test the feasibility of broadcasting its electronic database. Such broadcasts might be arranged for demonstration in connection with the AAAS meeting and the National White House Conference on small business to be held next year.

The White House Conference on Small Business

Subsequent to my presentation, I learned by accident that the White House Conference on Small Business was having meetings in all States to discuss issues and to elect delegates to the National Conference to be held in Washington, D.C. in August 17-21, 1986.

Information is vital to small business. While not all such information comes from the Federal Government, small business is at a disadvantage with respect to large business in obtaining access to those vital items whether they pertain to legislation, procurement, regulations, announcements, statistics, trade opportunities, patents and trademarks, filings with the Securities and Exchange Commission, additions to databases, reports, etc.

In the first place most small businesses, defined as those with less than 500 employees, cannot afford to maintain an office in Washington, D.C. which can watch the flood of information and rapidly obtain items of interest.

In the second place most small businesses cannot afford the present high charges for online access to existing commercial databases. This is not to say that the charges are excessive based on costs, but rather that just as the online databases provided a quantum improvement over paper distribution, broadcast and optical disc distribution provide a quantum improvement over existing methods with respect to cost, speed, and effectiveness in use.

As an example, the combination of optical discs and information broadcast can reduce the cost of the information in the Congressional Directory, which for 1985-86 cost $13.00 in paper, to just a few cents, expand the coverage to include all staff members, their telephone numbers, and the same for the agencies, and keep that coverage current in a way that individuals and libraries can manage it.

In the third place small business is at a disadvantage with respect to large business in handling the paper product. If both have to handle a given amount of paper with respect to a given competitive area, the proportion of total cost for small business would be greater than for large business.

In the broadcast of information both large and small business would benefit, but the greater benefit would accrue to small business. If a small computer system could capture and filter the information for both, then they would be on an equal basis. While the cost of the system for small business would still be a larger proportion of total cost, the effectiveness of the computer system and its greater coverage would be an offset.

In an effort to raise this issue for discussion at the National Conference on Small Business, a paper discussing "Information and Small Business" has been provided to delegates at some of the State meetings, and a draft resolution has been introduced recommending that all public electronic information of the Federal Government be broadcast on the most cost effective basis available. A copy of this paper and resolution are attached.

Role of Technology in Education

The key to computer literacy is learning to make the computer help the individual. The objective of making people literate is to enable them better to enjoy life and to participate effectively in society. If individuals learn to use the computer to write, to calculate, to store information, to communicate, and to retrieve information, then they are computer literate.

If my vision of the future is accurate, the greatest use of the computer will be the retrieval of information. If all public information is ultimately broadcast, this will certainly be the case.

We are now at time in the development of technology where the Federal Government can chart the direction of our information society. It can either influence the trend to the broadcast of information for the widest distribution at the lowest cost or it can use its power to slow that process by policies that increase the cost of electronic distribution or even prohibit the bulk distribution of agency databases. If the latter course is followed those least able to pay will be the losers.

An independent school district in Texas with a program to help children do better research for classroom papers spent $400.00 in one month for student access to online databases. With an optical disc system, this cost could be drastically reduced and more students served. As the broadcast of information becomes a reality, students will have an opportunity to expand the research possibilities at a lower cost to the school districts.

It is commendable that the Joint Committee on Printing is studying the feasibility and desirability of providing access to Federal Government information in electronic formats to depository libraries. Broadcast distribution would make it available to all libraries in a form that they can handle. It is impossible for the smaller libraries to handle all of the government information in paper. With the promise of new technology, it is conceivable that even a small county library could handle all public domain information, at least for the next few years. What better way to teach children the techniques and importance of research?

International Trade

In 1980 the Department of Commerce was working on a Worldwide Information and Trade System (WITS). Unfortunately it never materialized as a system. If we were to have had such a system in operation during these last few years, it is possible that the U.S. trade deficit would not be as large as it is today. The information that belongs in such a system could be readily broadcast today at a very small fraction of the cost of the system as originally conceived and with results that might perhaps have even greater impact.

It is clear that if the people of the United States are to maintain and increase their level of living, productivity will have to increase. The distribution and use of information offers the greatest promise for such an increase. A report of the Bureau of National Affairs Inc. estimated that 10 percent of all office workers now use computer terminals. This could grow to more than 50 percent by the end of the decade with an increase in productivity from 50 to 500 percent depending upon the type of application.

Conclusion

The world is changing. The information revolution promises to produce an even greater impact than the industrial revolution.

Government should be in the lead, especially since new technology can produce better results in the distribution of information at lower cost. The National Library of Medicine, which was in the lead in developing what everyone recognizes as an extremely valuable database, should now take the lead in broadcasting its new additions at the highest possible data rate commensurate with equipment costs for libraries.

The PTO which is developing an excellent automation system should pass on the benefits to the taxpayers who are financing it by broadcasting the information so that anyone who can use it can have access to it.

Information is not a perishable asset, nor is it subject to the law of diminishing returns in the way of most goods and services. As the PTO report of 1982 recognized information dissemination is important because of the "multiplier" effect. In international competition rapid dissemination of information can make the difference between success and failure.

C. Letters From Robert N. Snyder, Executive Vice President, Disclosure, Bethesda, Maryland, Dated June 13 and November 8, 1985

Disclosure
5161 River Road
Bethesda, Maryland 20816
Telephone: 301-951-1300
Telex: 89-6452

June 13, 1985

The Honorable Glenn English
U. S. House of Representatives
Chairman, Subcommittee of Government Information,
Justice, and Agriculture
B-349-C Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Disclosure Information Group ("Disclosure") received your letter of May 8 regarding the hearings on electronic collection and dissemination of information by federal agencies. As the Securities and Exchange Commission ("SEC") contractor for the dissemination of public company filings over the past 17 years, Disclosure would be happy to assist the Subcommittee in its efforts.

The Subcommittee should recognize that there are several methods available to compute document levels. The most relevant methods are ascertaining the actual number of documents filed or the number of microfiche produced from these documents (which latter number determines our operational costs). In order to provide the Subcommittee with complete information, both methods are reported here.

During the period June 1, 1984 through May 31, 1985, Disclosure received 222,355 documents from the SEC. Of this total, 108,331 documents (49%) are actually sold to the public. The remainder of the documents are of little or no interest to the investing public.

From the 222,355 documents received, Disclosure produced 290,661 microfiche. Of this total, 164,487 (57%) are commercially marketable.

These figures represent only those filings received during the past twelve months. The quantity of public company filings that are filmed annually has grown substantially since 1968 when Disclosure began filming SEC documents. In recent years, the most rapid growth has been in those documents that are not of interest in the commercial market. For example, Broker Dealer/Investment Advisor filings grew from 3,921 filings made in February and March 1984 to 8,701 filings made during those same two months in 1985.

In the past six years, Disclosure has been contractually responsible for filming all documents received by the Commission, regardless of commercial interest, at no cost to the Commission. Prior to that time, Disclosure was contractually responsible for filming only those documents that had a commercial market.

If you have any questions on the enclosed information or need further information, please do not hesitate to give me a call.

Sincerely,

Robert N. Snyder

cc: R. Gellman, Subcommittee Counsel

RNS/ls
1105I

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5161 River Road
Bethesda, Maryland 20816
Telephone: 301-951-1300
Telex: 89-0452

November 1, 1985

The Honorable Glenn English
Chairman
Government Information, Justice and
Agriculture Subcommittee of the
Committee on Governmental Operations
Rayburn House Office Building
Room 2235
Washington, D.C. 20515

Dear Chairman English:

Disclosure Information Group was the information dissemination contractor to the Securities and Exchange Commission ("SEC" or the "Commission") from 1968 through September 1985. We believe those 17 years of experience gives us a unique perspective on the special problems inherent in reproducing and disseminating information on publicly-traded companies, and, of equal importance, the requirements of thousands of end users of this information. We are writing to express our concerns about the electronic filing system ("EDGAR") currently under development by the SEC.

Specifically, our concerns focus on the SEC's intent to exclude paper records in the proposed electronic filing system, to the detriment of a substantial community of end users of the information that rely on paper or microfiche copies of SEC filings to maintain archival records. Because the EDGAR project may also serve as a model for other federal agencies to use in the design and implementation of their own electronic dissemination systems, Disclosure requests that this letter be included in the record of your Subcommittee's hearings on government database automation.

The SEC plans to contract for the development and operation of an electronic data system that would, as currently designed, become the sole means by which information is filed with, maintained at, and disseminated from the SEC. The SEC has issued a Pre-Solicitation document that provides details on the operation of the proposed EDGAR system. The SEC has indicated that it will release a formal Request for Proposals in the fall of 1985 in the expectation that EDGAR will be operational in the fall of 1986.

The proposed EDGAR design mandates that companies that file reports required by the SEC do so only by electronic means; no paper filings will be permitted. (Because the EDGAR system will not be capable of digitizing charts, graphs, pictures, or maps, however, these pictorial representations are to be submitted in paper form as separate filings. This limitation in the EDGAR design will cause confusion in the user community that will now need to refer to several sources to assemble complete copies of reports.) This decision to prohibit paper filings -- with the one exception -- has already been implemented in the current EDGAR pilot project, in which over 100 companies are participating.

The proposed EDGAR design with its prohibition against paper filings completely overlooks the needs of many private sector users of SEC data that maintain an archival record of SEC filings. Libraries, financial institutions, law firms and various other user groups need complete physical documents (e.g. paper or microfiche) that can be reproduced readily and stored over long periods of time. EDGAR as currently designed would thwart these user needs. The data that is now transmitted electronically in the pilot program is difficult to reproduce on paper because awkward margin shifts recur frequently and the type size is too small, making the documents difficult to read and unsuitable for telecopying. Additionally, because charts, graphs, pictures and maps will be filed on paper, a duplicate, cross-referenced filing system will have to be developed and maintained by users to accommodate both the electronic filings and the accompanying paper documents that complete the filing. The potential injury to a large body of users who will not have ready access to necessary financial data can be eliminated if the SEC will require concurrent paper filings during a suitable test period. The purpose of the additional paper document would be twofold: (1) to continue uninterrupted the dissemination of financial information, and (2) as a back-up if problems arise in the electronic filing process.

As with any new program, time will be required to test and modify EDGAR to best meet the needs of the sponsor and user community. However, until EDGAR is completely operational and fulfills its intended objective, as measured by the user community as well as the SEC, the SEC should not disrupt the flow of complete financial information to the public for the purpose of maintaining a "live" experiment. Furthermore, as all registrants must continue to produce and distribute paper filings to potential investors, shareholders, applicable exchanges, and states, requiring the concurrent submission of a paper document to the SEC from EDGAR participants will not burden these filers or the Commission.

Assuming that the SEC is faced with the difficulty of determining whether the paper or the electronic filing represents the "official" filing, the SEC need only mandate one as the official filing and file the other one for reference.

Timely and complete information on publicly-traded companies is vital to both the effective regulation of the securities market by the SEC and informed investment by the public. In our view, continuing a paper trail will enhance the ability of the user public to obtain access to such information while not impeding the regulatory function of the Commission.

Sincerely,

Robert W. Snyder
Executive Vice President

RWS:ran
1344I

APPENDIX 10.—PATENT AND TRADEMARK OFFICE EXCHANGE AGREEMENTS

AGREEMENT

The U.S. Patent and Trademark Office (PTO) and Thomson and Thomson (T&T) agree to exchange the products and/or services as specified under the conditions stated below:

1. The PTO will provide to T&T the following items on a non-exclusive basis, without charge, on a mutually agreed-upon schedule. This schedule is included as Attachment A to this agreement and may be modified by the mutual consent of the parties.

a. A paper copy with a film backup of all active federally registered marks through December 31, 1984, and a paper copy of all "flag" pages contained in the PTO bound volumes. Expired or cancelled registrations will not be intentionally included.

b. A paper copy of the drawings of applications pending as of April, 1983 or a date mutually agreed upon by the parties. Copies may be limited to marks containing design elements or stylized displays. The images of marks represented on such copies shall be reduced to such standard size as is necessary to facilitate digitization.

c. A computer file of active registration numbers as of December 31, 1982, and of all pending application serial numbers as of the cut-off date selected in Section 1.b. above.

d. A paper copy of available assignment index cards for all active registered and pending marks available as of the date on which the cards are copied.

e. Complete specifications for the digitized images of marks with design elements or stylized typography. Also to be included are specifications and instructions for coding and/or keying into a computer processable medium any and all of the data elements in the PTO trademark data base. Final specifications will be furnished in accordance with the Schedule in Attachment A.

f. A paper copy of all special, non-registration documents on file in the Trademark Search Room.

Items provided by the PTO must be of such quality so as to be legible. The paper copies of registrations and drawings of pending applications must be of such quality as to be usable for producing a clear, legible, black and white paper or film copy or to allow for digitization of design elements. Attachment D,

g. Errata sheets associated with active trademark registrations contained in the PTO's bound volumes as of December 31, 1982.

h. Information relevant to all amendments.

i. Twelve copies of each trademark Official Gazette and other pertinent publications.

j. Documentation of all opposition proceedings including the final outcome of such proceedings.

k. Concurrent use proceedings, including the outcome of such proceedings

l. Section 8 and Section 15 Affidavits filed with the PTO.

m. A listing of trademarks republished with pertinent dates, and supplemental registrations.

n. Section 8 cancellations.

o. Other Cancellation Actions, including the outcome of disputed actions.

p. Section 7d cancellations.

q. Withdrawn registrations

r. Trademarks cancelled in error

s. Cancelled trademarks which are revived.

t. Assignment data including assignees, assiginors, dates, registration numbers, serial number, reel number and frame numbers, and copies of microfilm reels of assignments, both past and future, for verification.

u. Renewal documents, including current ownership statements.

v. Trademark Trial and Appeal Board decisions.

w. To the extent practical, past Trademark Trial and Appeal Board decisions.

x. Serial numbers which are misassigned, or which were not assigned.

y. Any data not specifically referred to herein currently extant or subsequently required by or customarily provided by the PTO, as mutually agreed upon.

Items provided by the PTO will be legible, and any design elements will be of sufficient quality to be usable for producing a clear, legible, black and white paper or film copy. In the event that TCR shall receive items of substandard legibility, it shall have the right to return them to PTO for replacement by items of suitable legibility. This shall be TCR's only remedy.

2. The PTO will perform or provide the following:

a. Equipment (including maintenance) in good working order and computing resources (including maintenance but excluding personal services) to be used by TCR to edit and/or verify and convert to computer processable form the data contained in the documents. Equipment to be furnished by the PTO is listed in Attachment B, and is to be specified by the PTO after completion of any acquisition action that may be required.

b. Recognizing TCR's desire to continually evaluate the effectiveness of equipment, and to utilize equipment which enhances employee productivity, the PTO agrees to review the results of any testing or research conducted by TCR related to data entry or computer terminal equipment. As equipment is identified by TCR to be superior to PTO furnished equipment, the PTO will exert its best efforts to acquire such equipment for use by TCR within the constraints of available funds, and federal procurement and federal property management regulations.

c. The PTO and TCR shall mutually agree on the specifications and instructions for coding and/or keying into a computer processable medium any and all of the data elements listed in 1. above, needed by the PTO for its automated trademark data base.

d. Any magnetically encoded tape resulting from OCR scanning of original documents received by the PTO which are or relate to trademark applications or registrations or any other data elements contained in 1. above.

e. The computer processable text of trademarks as prepared for printing in the trademark Official Gazette, in a mutually agreed upon format, and documentation related to its creation and use.

f. Notwithstanding anything herein contained to the contrary in paragraph 9, the PTO agrees to provide adequate space in the Trademark Search Library where TCR can provide search services to the public for a fee during the same hours as the Library is open to the public. TCR shall assume responsibility for the installation and maintenance of all equipment associated with their search service, including telephone equipment. The PTO shall not be liable for any damage or loss of such equipment as TCR may place in the space provided.

3. TCR shall provide to the PTO data contained in the documents provided to TCR under 1., above, in a computer processable form, in a format to be established by mutual agreement.

Data to be furnished by TCR shall include the following:

a. Data necessary for the PTO's trademark application monitoring system, consisting of bibliographic data captured from the newly filed trademark application, updated information resulting from amendment and office actions, and TTAB and court decisions.

b. Data necessary for establishing and maintaining a computerized trademark assignment information file.

c. Data necessary for the publication of the textual portions of the trademark registration documents, including Official Gazette textual material.

d. Data necessary for the printing of TTAB decisions.

4. In addition, TCR shall verify, validate, and enrich all data it sends to the PTO by using appropriate TCR proprietary editing software which will, among other things, test for logic and consistency within the data itself.

5. In the event that TCR is unable to fulfill its obligations or unilaterally terminates this agreement, TCR shall grant to the PTO a license to use TCR's software used in the fulfillment of this agreement for the remaining

period of the agreement at no cost to the PTO, and to provide reasonable documentation and assistance in the use and maintenance of the software.

6. Each party will exert its best efforts to insure the accuracy and completeness of the data transferred to the other, but neither party warrants its data to be free from errors or to be complete, and neither party shall be responsible to the other for damages arising therefrom. Best efforts shall mean reasonable visual proofing and computer editing, where possible of application and printed data converted from document to computer processable form.

> a. Each party shall promptly provide, in a format to be mutually determined, identification of any omissions, inconsistencies or errors contained in any of the material furnished under this agreement, and the party who causes the omission, inconsistency or error shall exercise its best efforts to promptly correct the omission, inconsistency or error, and notify the other party of the correction, whenever appropriate.

7. The PTO shall allocate adequate personnel to assist in identifying, obtaining and correcting errors of omission, commission and incompleteness located by TCR's information system or by the PTO. The PTO and TCR shall each designate in writing the name or names and successors thereto of persons responsible for resolution of all errors and other problems resulting from this agreement and who will receive notice of all such found by PTO and TCR personnel.

8. For the period of this agreement, or any extensions thereto, the PTO will not sell, assign, lease, donate, or in any other way convey, and will apply its best efforts to avoid and prevent providing a computer processable copy of data provided by TCR to any third party except as follows: bibligraphic data related to new trademark applications, assignment information subsequent to December 31, 1984, and computer print data (Official Gazette print tape) or derivitives from it.

In the event that the Freedom of Information Act or other law necessitates releasing the information, the PTO will provide only a printed paper copy of the document or information in a style and format which will prevent or discourage conversion to computer processable form unless ordered to do otherwise by a court of competent jurisdiction.

Transfer of the data provided to the PTO in a computer processable form or in a form readily convertible to a computer processable form to any other agency of the U.S. government, will be made subject to the written acknowledgement by the agency that they will abide by all the terms and conditions of this agreement.

9. For the period of this agreement, or any extensions thereto, the following additional conditions will apply:

a. Terminals made available to members of the public by the PTO for the purpose of using PTO data elements derived from the data referenced above, alone or in combination with other PTO data, will be located in designated public search area at the PTO or at Patent Depository Libraries and will be used only with search software limited in capability to that comparable to present manual paper file searching in the PTO Trademark Search Room. A description of the current trademark search library for establishing this comparable level will be incorporated into this agreement.

PTO software with greater capability that may be provided to trademark examiners, PTO officials, or other PTO employees for accessing the data, will not be available to the public.

b. No connection from outside the PTO will be permitted for accessing any data provided the PTO under this agreement, except from Patent Depository Libraries under the conditions stated above, or TCR without restriction.

c. Data captured by TCR under the provisions of this agreement shall not be used for commercial purposes prior to the time that the same data is made available in source document form to other commercial third parties.

10. Magnetic tape furnished under this agreement shall be returned to the originator within sixty calendar days of receipt. Equipment furnished by the PTO under this agreement is Government Furnished Equipment, and shall be returned to the PTO or elsewhere as mutually agreed or pursuant to contract with the vendor or lessor of such equipment, in like new condition less normal wear and tear upon termination of this agreement or in such condition that the manufacturer or the manufacturer's designated representative will continue maintenance or take over the maintenance.

11. All items exchanged under the terms of this agreement by the PTO and TCR shall become the non-exclusive property of the recipient subject to the terms of this agreement.

12. Delivery to TCR shall mean delivery by means mutually agreed upon to TCR's facility located at One Prickly Pear Hill, Croton-on-Hudson, New York 10520 or elsewhere as may be mutually agreed. Transportation of materials to and from TCR's facility or elsewhere as mutually agreed will be the responsibility of the PTO.

13. Delivery to the PTO shall mean delivery to the PTO's facility located in Arlington, VA or elsewhere as may be mutually agreed.

14. As used herein, the words "mark", and "trademark" are intended to include trademarks, service marks, certification marks, and collective marks and any other kind of mark registrable by the PTO under the Lanham Act or any subsequent amendment thereto or replacement thereof. The word "assignment" refers to all documents that either evidence the transfer of title or that affect title, and as such are deemed to be recordable by the PTO.

15. Rights and obligations created by this agreement may be assigned at any time by TCR to another entity with the written concurrence of the PTO which shall not be unreasonably withheld. In any case, TCR shall remain responsible for the proper compliance with its obligations to the PTO.

16. No agreement will be made with any other party which would result in withholding of any data referred to herein in any form from TCR.

17. The parties agree that in the event that there is a failure to demand compliance with any provisions set forth in this agreement such will not invalidate this agreement either in whole or in part, nor will it prohibit the appropriate party from demanding strict compliance with any and all of the provisions of this agreement.

18. In the event that any provision of this agreement is held to be unenforceable such will not invalidate the other provisions of this agreement.

19. The PTO acknowledges TCR's intention to copyright, patent or otherwise protect its exclusive data, software, or other information where appropriate.

20. If either party shall substantially fail to comply with any of the material terms or conditions contained herein, that party shall be deemed to have committed a breach of this Agreement, and the party not in breach may give notice in writing requiring it to cure such breach. If such breach is not cured within sixty days after receipt of such notice, the party not in breach shall have the right, without prejudice to any other rights conferred on it by this Agreement or by law, to terminate this Agreement by giving written notice thereof to take effect immediately.

21. This agreement represents the entire understanding between the parties and may not be modified except in writing signed by both parties. The agreement takes effect when signed by both parties, and will remain in effect for a period of ten years and six months from that date. It may be modified or terminated at any time by mutual consent of the parties.

Gerald J. Mossinghoff
Commissioner of Patents
and Trademarks

Irving Ruzan
President
TCR Service, Inc.

AGREEMENT BETWEEN THE PTO
AND TCR SERVICE, INC

Agreement made this 10th day of May 1983, by and between the U.S. Patent and Trademark Office (PTO) and TCR Service, Inc. (TCR), One Pricky Pear Hill, Croton-on Hudson, New York 10520.

WHEREAS the PTO and TCR are desirous of entering into an agreement in compliance with the authority of 35 USC Section 6(a) and all other appropriate and relevant laws, rules and regulations; and

WHEREAS PTO and TCR agree to exchange the data products and services set forth herein;

NOW THEREFORE, the parties in consideration of the mutual promises and conditions set forth herein agree as follows:

1. The PTO will provide to TCR paper, microform or machine readable copies, original documents, or lists, as mutually agreed upon of the following items on a non-exclusive basis (except as otherwise indicated), without charge, on a mutually agreed-upon schedule.

Information and/or documents provided by the PTO under this agreement will be mutually agreed upon by the parties, and furnished to TCR as soon as practically possible but in no event later than the same information and/or documents become available to any third party. Attachment A to this agreement establishes the schedule for the exchange. It may be modified by the mutual agreement of both parties.

a. All newly received formal and informal trademark applications, including drawings, as soon as possible after initial processing by the PTO.

b. All rejection actions prepared by the trademark examiners.

c. A listing of abandoned trademark applications, including the date of abandonment.

d. A listing of all suspended trademark applications.

e. A listing of all trademarks abandoned in error.

f. A listing of all revivals of abandoned trademarks.

which will be furnished as prescribed by Attachment A, will contain examples of items that meet this minimum legibility requirement. In the event that T&T receives items of lower legibility or of non-standard image size, it shall have the right to return them to the PTO for replacement by items of suitable legibility. This shall be T&T's only remedy.

2. PTO will provide to T&T the following additional data on a non-exclusive basis, without charge, beginning at dates stated below and continuing on a mutually agreed upon schedule for the term of this agreement. As specified below, the data will be furnished on paper, microfilm or magnetic tape. If on magnetic tape, the data will be furnished in a format to be established by mutual agreement between the parties. The PTO will supply T&T with complete documentation for each tape format. T&T will be consulted with respect to any changes to the initial formats. Changes will not be implemented with less than 30 days notice.

a. The text of marks as prepared for printing covering the period from September, 1980 to the present, shall be transmitted to T&T as soon as possible after execution of the agreement. On an ongoing basis, tapes will be transmitted at weekly intervals on or before the date of publication of the corresponding Official Gazette. If possible, tapes will be provided to T&T one to two weeks prior to publication. Tapes produced after the conclusion of the current data base printing contract shall contain data equivalent to that which is currently available as described in Attachment C. If informational and errata notices are not included on the Official Gazette tape, they shall be provided in paper form.

b. Complete bibliographic data as it is captured by the PTO during initial processing of applications for registration (Attachment D). This data shall be supplied on magnetic tape for all applications subsequent to those identified in Section 1.b. above. Tapes will be supplied at least once a week during the term of this agreement.

c. A paper copy of all new trademark drawings corresponding to the applications referenced in 2.b. above, suitable for copying, black and white filming or digitization. At the end of a two year period, copies will be limited only to those marks that are required for digitization.

d. A paper copy of any drawing which amends a pending trademark application or an active trademark registration containing design elements or non-standard typography. A copy of all substitute application drawings submitted to replace informal or unscannable drawings shall also be included. These copies will be batched together and forwarded to T&T along with the next group of new application drawings.

e. Copies of all assignment index cards relating to trademark assignments recorded after the backfile copying process required by Section 1.d., and December 31, 1984.

f. A magnetic tape of trademark assignment information for all assignments filed from January 1, 1985 through December 31, 1992. The tapes shall be furnished at monthly intervals and will include all trademark assignments actually recorded during said interval.

g. A listing or magnetic tape identifying all trademark application serial numbers that are abandoned or reinstated to pending status subsequent to the execution of this agreement. In addition, similar information for all applications which are revived, reinstated, or vacated as misassigned will be supplied. The status codes that will be included are indicated on Attachment E. This listing or tape will be supplied on a monthly basis and will include the serial numbers that have been abandoned, revived, reinstated, or vacated; the status date, and the corresponding status code.

h. A computer tape or listing of trademark application and registration status information generated by the system. The tape or listing, which will be produced on a monthly basis, will contain the serial number or registration number, the current status code, and the status date for each application or registration which changed status during the monthly interval. The status codes that will appear on the tape or listing are indicated in Attachment E of this agreement. Those status codes that are not captured in the initial phase of the system will be reported at such time as they are incorporated into the system.

i. A paper copy of each newly filed special, non-registration document. Each will be submitted with the next group of application drawings sent to T&T.

Tapes and other material furnished by the PTO shall be made available to T&T no later than such tapes or materials are made available to any third party for public use.

3. The PTO shall provide space to T&T at the PTO for the photocopying of all Trademark Trial and Appeal Board (TTAB) index cards. Photocopying shall be done at the expense of T&T and with T&T's equipment, and the PTO's responsibility is limited to the provision of adequate space, electrical service, and access to

the records to be photocopied. T&T shall be permitted to update this information monthly during the term of this agreement in a similar manner as provided herein. If production of the TTAB index cards is discontinued, the information shall be provided or made available in either magnetic or paper form.

4. T&T will provide to the PTO, on a non-exclusive basis, without charge in accordance with the schedule in Attachment A, computer tapes containing information as described below. In the event that T&T copies the information contained on the opposition index cards referred to in 3. above in computer readable form, T&T will provide the PTO with a copy thereof at no expense to the PTO. The format of all tapes exchanged under this agreement will be established by mutual agreement.

a. All active marks as of December 31, 1982. Said tape will include the serial number, filing date, and registration number of each mark.

b. Information which identifies those applications in which the initial search class designations are incorrect or incomplete and provides the corrected or additional search classification data. Those applications in which the class assignment is potentially incorrect, and might require investigation of the file wrapper contents for clarification, will be identified separately. The tape shall be forwarded to the PTO within seven working days of receipt by T&T of the new application bibliographic tapes or application drawings.

c. Corrected or proper spellings of all phonetically equivalent or otherwise corrupted words that appear in the active registrations and pending registrations identified by the magnetic tape described in Section 1.c. above.

d. Corrected or proper spelling information on a continuing basis for all newly filed applications represented by Section 2.b. above.

e. Digitized image information for each active registered and pending mark described in Section 1.c. which includes a stylized display of a verbal element or design matter. The magnetic tape will contain each serial or registration number and an uncompressed digitized equivalent of the corresponding mark. Images shall be digitized at 300 picture elements per inch. Digitized information relating to marks not included as pending applications in Section 1.b. and filed prior to the specified delivery date will also be included.

f. Digitized image information relating to stylized display of a verbal element or design matter for the new applications received by T&T through the term of this agreement. All work will be completed on said drawings and sent to the PTO within seven working days of receipt of the drawing.

g. Information relating to special, non-registration documents currently filed in the registered section of the Trademark Search file. The information consisting of generic chemical and drug names; adopted Federal agency names, emblems, and symbols; and filing under various trademark agreements and treaties will be captured in a modified record format and given a special identifier number. All such documents currently on file in the Trademark Search Library will be included as will all additional documents submitted to the PTO during the term of this agreement.

h. Design descriptor codes that relate to each digitized mark. The standard reference for such work will be the three (3) level, heirarchical coding structure contained in the International Classification of the Figurative Elements of Marks, produced by the World Intellectual Property Organization. The parties will jointly establish guidelines for coding practices.

5. Each party will exert its best efforts to insure the accuracy and completeness of the data transferred to the other, but neither party warrants its data to be free from errors or complete, and neither party shall be responsible to the other for damages arising therefrom. Best efforts shall mean reasonable visual proofing and computer editing of application and printing data converted to computer processable form.

Each party shall promptly provide, in a format to be mutually determined, identification of any omissions, inconsistencies, or errors contained in any of the material furnished under Sections 1, 2, and 4 of the agreement. The party that causes the omission, inconsistency, or error shall exercise its best efforts to correct the omission, inconsistency, or error promptly, and notify the other party of the correction, whenever appropriate.

6. Records, data and information specified in Sections 1 through 4 have been valued as shown in Attachment C to this agreement. Any other exchange agreement or offer to sell these items into which the PTO may enter with a private firm during the term of this agreement will be based on the valuation shown, adjusted only for any increased costs and/or inflationary factors. Both parties shall exert their best efforts to maintain equity in the value of exchange items.

7. For the period of this agreement, the PTO will not sell and will apply its best efforts to avoid and prevent providing a computer processable copy of the data provided to the PTO to any party that requests the data under the Freedom of Information Act. Unless ordered by a court of competent jurisdiction to do otherwise, the PTO will provide only a printed, paper copy in a style and format that will prevent or discourage mechanical conversion to computer processable form.

Any transfer of a copy of the data provided to the PTO according to Section 4 above in a computer processable form or in a form readily convertible to a computer processable form to any other agency of the U.S. government or other government will be made subject to all of the conditions and limitations of this agreement.

8. For the period of this agreement, the following conditions will apply:

a. Terminals provided to trademark examiners, PTO officials, or other PTO employees for accessing the data will not be available to the public to perform searches.

b. Terminals made available to members of the public for the purpose of using data elements derived from the data referenced in Sections 4.c., 4.d., and 4.g., alone or in combination with other PTO data, will be located in designated public search areas at the PTO or at Patent Depository Libraries, and will be used only with search techniques comparable and equivalent to present manual paper file searching in the PTO Trademark Search Library. Information provided to the PTO in accordance with Sections 4.e., 4.f., and 4.h. will be incorporated in the search system accessed by members of the public to the extent of conducting a search of design elements equivalent to present manual searching techniques. A description of the current Trademark Search Library for establishing this comparable level will be incorporated into this agreement by amendment within twelve months of the signing of the agreement.

c. Teleprocessing connection from outside the PTO will not be permitted for accessing any data provided the PTO under this agreement, except from Patent Depository Libraries under the conditions stated in Section 8.b. above.

d. The PTO will take all reasonable steps to insure that magnetic medium copies of any portion of the data provided by T&T are not made available to any person, except as may be needed for use by the PTO for its own use under the terms of this agreement.

9. In the event data provided under Section 2.a. above is provided prior to publication date, T&T guarantees that the data will not be disclosed prior to the publication date.

10. For all activities provided under Section 4.c., T&T is authorized, but not required, to use the information published in the Trademark Official Gazette upon issuance or renewal of a registration in determining the verbal elements of the trademark.

11. With the exception of magnetic tapes, which shall be returned to the originator within sixty calendar days of receipt, items exchanged under the terms of this agreement become the non-exclusive property of the recipients, subject only to the terms of this agreement.

12. Attachment A defines the schedules for exchange of items under this agreement, reached by mutual agreement between the parties. Delivery to T&T shall mean delivery to T&T's office or representative in the Washington, D.C. metropolitan area. By reference, the Attachment A is incorporated as a part of this agreement, as are all other attachments specifically referred to herein.

13. As used herein the words "mark" and "trademark" are intended to include trademarks, service marks, certification marks, and collective marks and any other kind of mark registrable by the PTO under the Lanham Act. The word "assignment" refers to all documents that either evidence the transfer of title or that affect title and, as such are deemed to be recordable by the PTO.

14. Rights and obligations created by this agreement may be assigned at any time by T&T to another entity with the written concurrence of the PTO. In any case, T&T will remain responsible for proper satisfaction of its obligations to the PTO.

15. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse the subsequent performance or nonperformance of any such term or condition by the other party.

16. Any notice hereunder shall be deemed duly given if sent by prepaid, certified mail, return receipt requested, addressed to the other party at the address set forth below or to such other address as either party may hereafter specify in writing to the other.

If to the PTO:

U.S. Patent and Trademark Office
Office of Micrographic Services
Crystal Plaza 2, room 6D15
Arlington, Virginia 22202

If to Thomson & Thomson:

Thomson & Thomson
120 Fulton Street
Boston, Massachusetts 02109

17. If either party shall substantially fail to comply with any of the material terms or conditions contained herein, that party shall be deemed to have committed a breach of this Agreement, and the party not in breach may give notice requiring it to cure such breach. If such breach is not cured within thirty (30) days after receipt of such notice, the party not in breach shall have the right, without prejudice to any other rights conferrred on it by this Agreement or by law, to terminate this Agreement by giving writtten notice thereof to take effect immediately.

18. If any part of this Agreement is held to be illegal, void or unenforceable by any legal or governmental authority, such holding shall not affect or in any way invalidate the remainder of this Agreement.

19. The PTO and T&T shall each be excused from any failure to perform hereunder if such failure is caused by natural disaster, such as earthquake or flood, fire, labor unrest, war conditions or other similar cause beyond the control of the affected party. Further, both parties acknowledge that the technology required for T&T to perform its obligations under Sections 4.e. and 4.f. above, relating to a system for the digitization of trademark images, is in the developmental stages. T&T shall use its best efforts to contract in a timely manner with a third party having the technical capabilities to develop such a system provided, however, that any delay resulting from T&T's inability to locate and contract with such a capable third party, despite such best efforts, or such third party's delay in performance or its non-performance for whatever reason, shall be considered an act of force majeure hereunder and shall accordingly extend the time for performance.

20. This agreement represents the entire understanding between the parties and may not be modified except in writing signed by both parties. It takes effect when signed by both parties and will remain in effect until April 30, 1993. It may be modified or terminated at any time by mutual consent of both parties.

BY: Gerald J Mossinghoff DATE: May 9, 1985
Commissioner of Patents and Trademarks
Gerald J. Mossinghoff

BY: Warren R. Thomson President DATE: May 9, 1985.
President, Thomson & Thomson
Warren R. Thomson

AGREEMENT

The U.S. Patent and Trademark Office (PTO) and Compu-Mark (CM) agree to exchange the products and/or services as specified under the conditions stated below:

1. The PTO will provide to CM the following items on a non-exclusive basis, without charge, on a mutually agreed-upon schedule. This schedule is included as Attachment A to this agreement, and may be modified by the mutual consent of the parties.

a. A paper copy with a film backup of all active federally registered marks contained in PTO bound volumes through December 1980. Expired or cancelled registrations will not be intentionally included.

b. A computer file of the pending application serial numbers and active registrations numbers as of December 31, 1982, to be provided by April 1, 1983.

c. A paper copy of the record of assignments (assignment index cards) of all active registered marks in b. above available as of December 31, 1982. A maximum of 750,000 assignment index cards will be furnished.

d. Specifications and instructions for coding and/or keying into a computer processable medium any and all of the data elements from items a. through c. above. Draft specifications are contained in Attachment B of this agreement. Final specifications will be furnished in accordance with the schedule in Attachment A.

Items provided by the PTO will be legible, and any design elements will be of sufficient quality to be usable for producing a clear, legible, black and white paper or film copy. Included, as attachment D, are specimens of items that meet this minimum legibility requirement. In the event that CM shall receive items of lower legibility it shall have the right to return them to the PTO for replacement by items of suitable legibility. This shall be CM's only remedy.

2. PTO will provide to CM the following additional data on a non-exclusive basis, without charge, beginning at dates mentioned below and continuing on a mutually agreed-upon schedule through December 31, 1992. The data will be furnished on magnetic tape in a format to be established by mutual agreement between the parties.

a. The text of marks as prepared for printing in the Trademark Official Gazette, covering the period from September 1980 to the present, shall be transmitted to CM as soon as possible after execution of the agreement. Tapes will be transmitted at weekly intervals on or before the date of publication of the corresponding Official Gazette. If possible, tapes will be provided to CM one to two weeks prior to publication.

b. Bibliographic data that exists in computer processable form at the time of execution of this agreement, corresponding to the marks referenced in 1.b. above.

c. Bibliographic data of new applications for registration subsequent to those identified in 1.b. above, will be supplemented in computer readable form at least once a month during the term of this agreement. Data will be provided no later than the date on which said data becomes available in the PTO public search room.

d. A microfilm or paper copy of all new trademark application drawings referenced in 2.c. above, suitable for copying or black and white filming. This copy shall be delivered to CM no later than the day the same information becomes available in the PTO public search room.

e. All assignment information relating to trademark assignments filed between January 1, 1983, and December 31, 1984, promptly after actual recording, to enable CM to fulfill its obligation under paragraph 4.d. below.

f. A computer readable file of trademark assignment information for all assignments filed from January 1, 1985 through December 31, 1992, at monthly intervals for all trademark assignments actually recorded during said interval.

g. A listing or computer tape of abandoned trademark application numbers, to be delivered monthly within ninety calendar days of abandonment.

3. The PTO shall provide space at the PTO to CM for the photocopying of opposition index cards. Photocopying shall be done at the expense of CM and with CM's equipment, and the PTO's responsibility is limited to the provision of adequate space, electrical service, and access to the records to be photocopied. CM shall be permitted to periodically update this information during the term of this agreement in a similar manner as provided herein.

4. CM will provide to the PTO, on a non-exclusive basis, without charge in accordance with the schedule in Attachment A, computer tapes containing the data elements specified in 1.d. above for each mark and assignment history referenced in 1. and 2. above. In the event that CM copies, in computer readable form, the information contained on the opposition index cards referred to in 3. above, CM will provide the PTO with a copy thereof at no expense to the PTO.

a. For those marks that have been republished under section 12(c), CM is authorized to use such republished information appearing in the Trademark Official Gazette, as the source of information for said registration, provided corrections, amendments and/or class surrenders made after republication and shown on the bound volume copy are also entered.

b. CM is authorized to use the information published in the Trademark Official Gazette upon issuance or renewal of a registration in determining the verbal elements of the trademark.

c. In the event data provided under 2.a. above is provided prior to publication date, CM guarantees that the data will not be disclosed prior to the publication date.

d. For the period starting January 1, 1983 and extending through December 31, 1984, in addition to computer tapes, CM will provide the PTO with four cards for each mark assigned, said cards to be of the same size and general layout as currently employed by the PTO for its assignment card indexes.

5. Each party will exert its best efforts to insure the accuracy and completeness of the data transferred to the other, but neither party warrants its data to be free from errors or complete, and neither party shall be responsible to the other for damages arising therefrom. Best efforts shall mean reasonable visual proofing, and computer editing of application and printing data converted from document to computer processable form.

a. Each party shall promptly provide, in a format to be mutually determined, identification of any omissions, inconsistencies or errors contained in any of the material furnished under sections 1, 2, and 4 of this agreement, and the party who causes the omission, inconsistency or error shall exercise its best efforts to promptly correct the omission, inconsistency or error, and notify the other party of the correction, whenever appropriate.

6. Records, data and information specified in items 1. through 4. have been valued as shown in Attachment C to this agreement. Any other exchange agreement or offer to sell these items which the PTO may enter with a private firm during the term of this agreement will be based on the valuation shown, adjusted only for any increased costs and/or inflationary factors. Items furnished by CM have been determined to be approximately equal in value to items furnished by the PTO.

7. For the period of this agreement, the PTO will not sell and will apply its best efforts to avoid and prevent providing a computer processable copy of the data provided to the PTO according to 4. above, to any party representing a private enterprise. In the event that requests for the data are made under the Freedom of Information Act, the PTO will provide only a printed, paper copy in a style and format that will prevent or discourage mechanical conversion to computer processable form. Any transfer of a copy of the data provided to the PTO according to paragraph 4 above in a computer processable form or in a form readily convertible to a computer processable form to any other agency of the U.S. government or other government will be made subject to all of the conditions and limitations of this agreement.

8. For the period of this agreement, the following conditions will apply:

a. Terminals provided to trademark examiners, PTO officials or other PTO employees for accessing the data will not be available to the public to perform searches.

b. Terminals made available to members of the public for the purpose of using data elements derived from the data referenced in 4. above, alone or in combination with other PTO data, will be located in designated public search areas at the PTO or at Patent Depository Libraries, and will be used only with search techniques comparable and equivalent to present manual paper file searching in the PTO Trademark Search Library. A description of the current Trademark Search Libary for establishing this comparable level will be incorporated into this agreement by amendment within twelve months of the signing of this agreement.

c. Teleprocessing connection from outside the PTO will not be permitted for accessing any data provided the PTO under section 4., except from Patent Depository Libraries under the conditions stated in (b) above.

d. The PTO will take reasonable steps to insure that magnetic medium copies of any portion of the data provided under section 4. are not made available to any person, except as may be needed for use by the PTO for its own use under the terms of this agreement.

9. With the exception of magnetic tapes, which shall be returned to the originator within sixty calendar days of receipt, items exchanged under the terms of this agreement become the non-exclusive property of the recipients, subject only to the terms of this agreement.

10. Attachment A defines the schedules for exchange of items under this agreement, reached by mutual agreement between the parties. Delivery to CM shall mean delivery to CM's office or representative in the Washington, D.C. metropolitan area. By reference, the Attachment A is incorporated as a part of this agreement.

11. As used herein the words "mark" and "trademark" are intended to include trademarks, service marks, certification marks and collective marks and any other kind of mark registrable by the PTO under the Lanham Act. The word "assignment" means the transfer of title to a mark and the document evidencing such transfer.

12. Rights and obligations created by this agreement may be assigned at any time by CM to another entity with the written concurrence of the PTO. In any case, CM will remain responsible for proper satisfaction of its obligations to the PTO. It is the PTO's understanding that CM may assign this agreement to a United States subsidiary or other affiliated company.

13. This agreement represents the entire understanding between the parties and may not be modified except in

writing signed by both parties. It takes effect when signed by both parties, and will remain in effect until December 31, 1992. It may be terminated at any time by mutal consent of both parties.

UNITED STATES PATENT AND TRADEMARK OFFICE

BY: Gerald J Mossinghoff DATE: 26 JAN 1983

Commissioner of Patents and Trademarks

BY: ______________________ DATE: __________

N.V. Compu-Mark S.A.

ATTACHMENT A
SCHEDULE

DELIVERABLE	START	END
To CM:		
Copies of Active Marks as per 1a (Two series: 1964 to 1980, and Pre-1964)	Jan. 1, 1983	May 31, 1983*
Keying Specifications as per 1d	Jan. 20, 1983	Continuing for term
List of Active Marks/Pending Application as per 1b	Apr. 1, 1983	Continuing for term
Assignment Index Cards as per 1c	May 1, 1983	Nov. 30, 1983**
OG Tapes (1980 to date)	Jan. 20, 1983	Continuing for term
Bibliographic Information - Application	ASAP	Apr. 1, 1983
Monthly Update of Bibliographic Information	Apr. 1, 1983	Continuing for term
Monthly Listing of Abandonments	May 1, 1983	Continuing for term
TO PTO:		
Registration Data Tapes	July 31, 1983	Nov. 30, 1983*
Assignment Data Tapes (up to Dec. 31, 1982)	Mar. 30, 1984	Dec. 31, 1984***

* At the rate of approximately 100,000 per month.
** At the rate of approximately 1/6 of the file per month.
*** At the rate of approximately 1/10 of the assignments per month.

ATTACHMENT C
VALUATION OF EXCHANGE ITEMS
U.S. Patent and Trademark Office and Compu-Mark

Contract Section	Item	Present Value to CM	Basis of Value
1a	[Paper copy of active trademark registrations from bound volumes].....	- - - -	[Items 1a, 1b and 1d have significant value but represent no cost avoidance for CM, since alternative sources would be employed by CM for converting Trademark information to computer readable form, independent of this agreement. CM has no intention of utilizing assignment information provided under 1c. Consequently no value was attributed to these items for CM within this agreement.]
1b	[File or list of pending and active marks as of 12/31/82].................	- - - -	
1c	[Paper copy of assignment records relating to active trademarks]........	- - -	
1d	[Coding and keying specifications]....		
2a	Backfile of *Official Gazette* tapes from 9/80 through 12/82.............	$ 12,300	2 years at $6,150 per year (NTIS price).
2a	New O.G. tapes from 1/83 through 12/92	$274,752	(60,000 marks per year), (300 characters/marks), ($0.0024/per keystroke for keying and document preparation) = $43,200 per year for 10 years.*
2b	Bibliographic data on newly filed TM application	$297,648	(65,000 applications per year), (300 characters/applications), ($0.0024 per keystroke) = $46,800 per year for 10 years.*
2c	Backfile of pending TM applications (bibliographic data)..................	$ 93,600	Two years of data as valued for 2b.

* Present value calculated by discounting at 10%/year, 1982 dollars: (PV = (.9) (PV_{y-1}). where y = year, PV = Present value. The values used are year 1, 1.00; year 2, 0.90; year 3, 0.81; year 4, 0.72; year 5, 0.64; year 6, 0.57; year 7, 0.51; year 8, 0.45;, year 9, 0.40; and year 10, 0.36.

Continued

ATTACHMENT C CONTINUATION
VALUATION OF EXCHANGE ITEMS
U.S. Patent and Trademark Office and Compu-Mark

Contract Section	Item	Present Value to CM	Basis of Value
2d	Copy of new application	$124,020	(65,000 applications/year), ($0.30 per page - one page/application). = $19,500 per year for 10 years. *
2e	Assignments on tapes 1/85 through 12/92	$ 37,830	(10,000 assignments per year) (260 keystrokes/assignment), ($0.0024/keystroke) =$6,240/year for years 1985-1992. *
2f	Listing of abandoned applications	$ 300	
3	Opposition card data	$ 400	
TOTAL		$830,850	

Contract Section	Item	Present Value to PTO	Basis of Value
4	Assignment data in magnetic form	$421,200	($0.0024 per keystroke), (260 keystrokes per record), (750,000 records)*
4	Active marks on magnetic tape	$360,000	($0.0024 per keystroke) (500,000 marks) (300 strokes per mark).
1982/83	Assignment tapes and cards	$ 34,656	For cards and keystroking
4	Opposition data	$ 9,158	(300 keystrokes per opposition). ($0.0024 per stroke) (2,000/year) = $1,440 per year for 10 years. *
TOTAL		$825,014	

* Present value calculated by discounting at 10%/year, 1982 dollars: (PV = (.9) (PV_{y-1}). where y = year, PV = Present value. The values used are year 1, 1.00; year 2, 0.90; year 3, 0.81; year 4, 0.72; year 5, 0.64; year 6, 0.57; year 7, 0.51; year 8, 0.45;, year 9, 0.40; and year 10, 0.36.